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No. 83-244

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

TELEGRAPH SAVINGS AND LOAN ASSOCIATION, et al.,
Petitioners,

v.

WILLIAM J. SCHILLING, et al.,
Respondents.

and

TELEGRAPH SAVINGS AND LOAN ASSOCIATION, et al.,
Petitioners,

v.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, FEDERAL HOME LOAN BANK BOARD AND WILLIAM J. SCHILLING,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

May 12, 1983.

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. WALTER E. HOFFMAN, *Senior District Judge.**

Nos. 80-2012, 82-1635 & 82-1702

TELEGRAPH SAVINGS AND LOAN ASSOCIATION, et al.,

Plaintiffs-Appellants,

v.

WILLIAM J. SCHILLING, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 80 C 2792—**John F. Grady**, *Judge.*

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* The Honorable Walter E. Hoffman, Senior Judge of the United States District Court for the Eastern District of Virginia, is sitting by designation.

No. 82-1457

TELEGRAPH SAVINGS AND LOAN ASSOCIATION, et al.,

Plaintiffs-Appellants,

v.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, FEDERAL HOME LOAN BANK BOARD and WILLIAM J. SCHILLING,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 80 C 2782—**Prentice H. Marshall**, *Judge*.

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled cause by Plaintiffs-Appellants Telegraph Savings and Loan Association, et al., no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

It is ordered that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 80-2012, 82-1635 & 82-1702

TELEGRAPH SAVINGS AND LOAN ASSOCIATION, *et al.*,
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No. 80 C 2792—**John F. Grady**, *Judge.*

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Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 80 C 2782—**Prentice H. Marshall**, *Judge.*

ARGUED DECEMBER 9, 1982—DECIDED MARCH 29, 1983

Before BAUER, COFFEY, *Circuit Judges*, and HOFFMAN, *Senior District Judge.**

* The Hon. Walter E. Hoffman, Senior Judge of the United States District Court for the Eastern District of Virginia, is sitting by designation.

BAUER, *Circuit Judge*. In this appeal Telegraph Savings & Loan Association (Telegraph) challenges its closure by the Illinois Commissioner of Savings and Loan Associations (Commissioner), the appointment of the Federal Savings & Loan Insurance Corporation (FSLIC) as receiver and the subsequent sale of Telegraph's assets to First Federal Savings & Loan Association. The district court held that the takeover and sale were proper. We affirm.

Telegraph was an Illinois chartered savings and loan association owned by one hundred and twenty stockholders and insured by the FSLIC. In the late 1970's Telegraph began experiencing financial difficulties. As a result of heavy losses, it was unable to satisfy the reserve and net worth minimums required by 12 C.F.R. § 563.13. When Telegraph's financial condition continued to decline at an ever-increasing rate, the state and federal officials charged with regulating savings and loan associations became alarmed. A special meeting was held in October, 1979 to identify the cause of Telegraph's decline and to propose some solutions. Telegraph's Board of Directors and representatives of the Commissioner, the FSLIC and the Federal Home Loan Bank Board (FHLBB) attended. At this meeting the Commissioner concluded that undercapitalization was causing Telegraph's shaky financial condition and indicated that, unless this situation was remedied, the state would have to assume custody.

Additional meetings were held in 1979 and 1980 to monitor Telegraph's financial status and to develop a plan for infusing Telegraph with new capital. Possible mergers were considered but only one concrete plan surfaced. The Heron Corporation offered to purchase 80% of Telegraph's preferred stock if the FSLIC would finance the purchase with a fifteen year interest free loan.[1] The FHLBB vetoed the Heron Proposal.

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[1] Although the Heron Corporation offered only seven million dollars for the stock, its offer was contingent on obtaining a fif-

(Footnote continued on following page)

When no other buyers came forward, the Commissioner and federal officials concluded that they had no choice but to take control. A takeover plan was devised whereby the Commissioner would assume custody of Telegraph and FHLBB would immediately appoint the FSLIC receiver. The FSLIC, in turn, would immediately transfer Telegraph's assets to First Federal Savings & Loan Association under a purchase and assumption agreement.

According to this prearranged plan, the takeover was effected on May 22, 1981 at Telegraph's main office. Just before the usual closing time the Commissioner served Telegraph's president with a notice that the state was assuming immediate custody. The notice explained that Telegraph's financial instability had created an emergency situation which necessitated the takeover. Telegraph had not received prior written notice of this decision.[2] After serving the president with the notice, the Commissioner sent his deputy to the teller's window where one of Telegraph's customers, A. Raymond Bacon, was waiting to withdraw twenty-five dollars. Bacon was making the withdrawal solely because the FHLBB had requested him to do so. When Bacon approached the teller, the deputy intervened. He took the withdrawal slip from Bacon and handed it, along with an affidavit stating that Bacon had been unable to withdraw his money, to the FHLBB agent. The purchase and assumption agreement was executed immediately and the next day Telegraph's operation opened under First Federal's name.

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[1] *continued*
teen million dollar, fifteen year interest free loan from the FSLIC, with an option to extend the loan for five more years at six per cent interest.

[2] ILL. REV. STAT. ch. 32 § 848, which authorizes the Commissioner to assume custody, provides that "[u]nless the Commissioner finds that an emergency exists which may result in loss to members or creditors and requires that he take custody immediately, he first shall give written notice to the directors, trustees, or liquidators specifying the conditions criticized and state a reasonable time within which correction may be made."

Telegraph then filed identical actions challenging the takeover and the appointment of the FSLIC as receiver in the federal court for the Northern District of Illinois and in the state court in the Circuit Court of Cook County. The federal action was assigned to Judge Grady. The state action was removed to federal court and assigned to Judge Marshall. Judge Marshall held that federal courts have exclusive jurisdiction over any action to remove the FSLIC as receiver and concluded that, since the state court never had jurisdiction over the action, it had no authority to remove it to federal court. Declining to grant Telegraph's request to remand back to the state court, Judge Marshall dismissed the action. Telegraph appealed to this court.

Telegraph also filed a new state court action, this time proceeding against the Commissioner but not the federal agencies. The state court, relying on Judge Marshall's opinion that federal courts have exclusive jurisdiction, dismissed that action. Telegraph appealed this dismissal; that appeal is currently pending in the state court.

The central issue in the case proceeding before Judge Grady was whether the requirements for appointment of an FSLIC receivership, set forth in 12 U.S.C. § 1729(c)(2) had been satisfied. Section 1729(c)(2) provides that the FHLBB has the authority to appoint the FSLIC receiver over a state savings and loan institution whenever it determines:

> (A) that . . . (ii) an insured institution has been closed by or under the laws of any State; and
>
> (B) that one or more of the grounds specified in paragraph (6)(A) of section 1464(d) of this title, existed with respect to such institution at the time a conservator, receiver, or other legal custodian was appointed, or at the time such institution was closed . . . ; and
>
> (C) that one or more of the holders of withdrawable accounts in such institution is unable to obtain a withdrawal of his account, in whole or in part; . . . .

12 U.S.C. § 1729(c)(2). Judge Grady concluded in response to defendants' motion for summary judgment that subsections (A) and (C) had been satisfied.

Thereafter a bench trial was held on the issue of whether subsection (B) had been satisfied. The FHLBB argued that applying the statutory test of insolvency, which is whether the "assets of the association are less than its obligations to its creditors and others . . . ," 12 U.S.C. § 1464(d)(6)(A)(i), Telegraph had been insolvent at the time of the appointment. Therefore, the FHLBB contended, section 1729(c)(2)(B) had also been fulfilled. Judge Grady agreed and entered judgment in favor of defendants.

On appeal Telegraph assigns numerous errors. It argues that the district court erred in granting partial summary judgment because the trial judge erroneously refused to consider state law issues which raised questions of material fact precluding summary disposition. It also asserts that subsections (A) and (C) cannot be satisfied by a prearranged closing orchestrated in tandem by state and federal authorities because such joint action subverts the purpose of the statute. With respect to the trial, Telegraph asserts that the finding that Telegraph was insolvent must be reversed because: (1) the statutory test of insolvency is unreliable and irrational; (2) highly relevant evidence was improperly excluded; and (3) the judge did not accord proper weight to the testimony of Telegraph's primary witness. Judge Marshall's dismissal of the action removed from state court is also part of this appeal, as are numerous rulings relating to Counts I, II, IV, VI, IX and X.

Before analyzing Telegraph's contentions, we note that Telegraph attempts to support its position with a myriad of arguments, some of which are unsupported by legal authority. Since many of these arguments were raised, fully analyzed, and properly rejected by the trial judge in four extensive memorandum opinions, *Telegraph Savings & Loan Ass'n v. Federal Savings & Loan Insurance Corp.*, No. 80 C 2792, slip ops. (N.D. Ill. Mar. 18, 1982;

Feb. 19, 1982; Aug. 4, 1981; June 9, 1981), we confine our analysis to those arguments which are dispositive of this appeal.

I

A basic understanding of the federal statutory scheme is essential to an analysis of the technical issues and specific sections involved here. The National Housing Act, 12 U.S.C. § 1701 *et seq.* created the FSLIC, under the direction of the FHLBB, to insure both federal and state savings and loan associations. 12 U.S.C. § 1725(a). When the statute was first enacted, the FSLIC could become receiver for a state savings and loan association only if the state requested its appointment. The FHLBB did not have independent authority to appoint the FSLIC as receiver for a state institution. 12 U.S.C. § 1729(c)(1).

Under section 1729(c)(1), the FSLIC was obligated to make insurance payments when a state association failed, even in situations where the state had refused to appoint the FSLIC as receiver, and, thus had deprived it of any voice in the liquidation process. For this reason, in 1968, after several state associations had failed and state authorities had refused to appoint the FSLIC receiver, the statute was amended to provide for greater federal control. Senate Report No. 1263, 90th Cong., 2d Sess. *reprinted in* 1968 U.S. CODE CONG. & AD. NEWS 2530, 2534. Section 1729(c)(2) was added, granting the FHLBB independent authority to appoint the FSLIC receiver for a state institution regardless of whether the state requested the appointment, whenever certain statutory requirements, enumerated in 12 U.S.C. § 1464(d), were satisfied.

The difference between a situation where the state appoints the FSLIC receiver and one where the FHLBB appoints the FSLIC receiver is the type of judicial review available. A section 1729(c)(1) receivership, where the receiver is appointed by the state commissioner acting pursuant to state law, can be challenged in state court. In contrast, where the FHLBB, acting on its own, appoints

the FSLIC receiver the challenge to that receivership can be raised only in federal court. 12 U.S.C. § 1464(d)(6)(A).

A. The Closing "By or Under" State Law

Telegraph characterizes the takeover orchestrated jointly by state and federal officials as a sham procedure because it created a receivership which could be challenged only in federal court. It emphasizes that if the Commissioner had assumed custody and appointed the FSLIC receiver without acting in conjunction with federal authorities, the Commissioner's finding of an emergency situation justifying the takeover without prior written notice could have been challenged in state court.[3] Since the FHLBB, rather than the state, appointed the FSLIC receiver, however, Telegraph was restricted to challenging the action in federal court. And since the district court held that the issue of whether Telegraph was closed in compliance with state law was irrelevant to the issue of whether the FHLBB properly determined that Telegraph was insolvent under 12 U.S.C. § 1464(d), Telegraph claims that it was caught in a "jurisdictional gap between the state and federal spheres, leaving [Telegraph] without a forum." Appellant's br. at 31. As a result of this "jurisdictional gap," Telegraph complains there is no court where the issue of whether the Com-

[3] The packet of custody and receivership documents used by the Commissioner on May 22 when he assumed custody were prepared by private attorneys representing the FHLBB and the FSLIC. These documents were given to the Commissioner on March 28. A prior written notice of intent to assume custody was not included. Telegraph insists that the fact that the documents were prepared nearly two months before they were used indicates that no emergency existed. Thus, it contends that the Commissioner violated Illinois law by failing to give prior written notice.

missioner acted in compliance with state law can be raised.[4]

The district court, relying on S. Rep. No. 1263, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. CODE CONG. & AD. NEWS 2530, 2534, rejected Telegraph's argument. It reasoned that Congress drafted section 1729(c)(2) purposely to limit challenges to FSLIC's appointment by the FHLBB to the federal courts because it intended the FHLBB's conduct to be evaluated under uniform federal law. Thus, the district court held that the closure requirement of section 1729(c)(2)(A) is met whenever an institution is closed by state officials. Since no party disputed that Telegraph was closed by state officials on May 22, the district court held that the closure requirement had been satisfied.

Citing no authority supporting its position, Telegraph would have us believe that it is always entitled to challenge a FSLIC receivership in state court. Neither the statutory language nor the legislative history supports Telegraph's contention. Section 1729(c)(2)(A)(ii) requires that "an insured institution has been closed by or under the laws of any State." 12 U.S.C. § 1729(c)(2)(A)(ii). The closing "by or under" state law triggers the FHLBB's authority. No language in this section requires the FHLBB to evaluate whether or not the closing was in compliance with state law. Our interpretation is supported by S. Rep. No. 1263, which states that Congress amended section 1729(c) in order to safeguard the financial integrity of the FSLIC and "to enable the FSLIC to defend its appointment under federal law instead of requiring it to defend the legality of the State savings and loan administrator's determinations under State law." S.

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[4] Although it held that the federal appointment could not be challenged under state law, the district court noted that if either the state or federal authorities violated state law, Telegraph may have an action for damages under Illinois law, ILL. REV. STAT. ch. 32, § 852, or under federal law, 42 U.S.C. § 1983.

Rep. No. 1263, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. CODE CONG. & AD. NEWS 2530, 2540.

The fact that the receivership must be challenged in federal court instead of state court, however, does not deprive Telegraph of effective judicial review. While the statute, as amended, makes no provision for reviewing actions of the state authorities, it does provide for a full review of whether the FHLBB was justified in appointing the FSLIC. In the overall statutory scheme the loss of review in state court is a trade-off for federal insurance. Congress has concluded that the interests of FSLIC's financial integrity demand that the FHLBB be able to assert its authority when it deems necessary. It has also provided for full review in federal court of whether Telegraph's financial condition justified appointment of a receiver. Thus, it is difficult to understand how Telegraph can complain that it has been denied a forum.

We note that the Ninth Circuit, presented with a similar factual situation, also has concluded that whenever the state closes an institution and the FSLIC is appointed as state receiver, section 1729(c)(2)(A)'s closing requirement is satisfied. *Fidelity Savings & Loan Ass'n v. Federal Home Loan Bank Board*, 689 F.2d 803, 813 (9th Cir. 1982). Telegraph attempts to distinguish *Fidelity* by claiming that the right it seeks to assert here, the right to review the actions of state officials according to state law, was granted in *Fidelity*. Telegraph misreads the case. In *Fidelity* the state law did not explicitly grant the Commissioner the power to close a state institution. Construing the Commissioner's statutory powers broadly, however, the *Fidelity* court held that the power to close an association under California law was properly implied from the Commissioner's power to take possession of an association for the purpose of liquidation. Having reached this conclusion, the *Fidelity* court did not, as Telegraph would have us do, sit in judgment on whether the Commissioner should have initiated the closure nor did it analyze whether the procedures by which the closure was effected complied with state law.

Where, as here, the state and federal authorities cooperate to close a state institution and appoint the FSLIC receiver in an effort to minimize financial risks and prevent depositor panic, compliance with the closing precondition becomes "substantially a ceremonial formality." *Fidelity Savings & Loan Ass'n v. Federal Home Loan Bank Board*, 689 F.2d 803, 813 (9th Cir. 1982). Thus, what Telegraph characterizes as a sham proceeding was merely the cooperative effort of state and federal authorities to protect depositors while at the same time minimizing FSLIC liability.

Yet, Telegraph has failed to show that denial of state court review deprived it of any rights. The evidence overwhelmingly establishes that Telegraph was in precarious financial condition and was continuing to decline. The evidence also establishes that Telegraph attended numerous meetings in 1979 and 1980 where Telegraph was put on notice that both state and federal officials intended to act unless its financial condition stabilized.

Telegraph apparently believes its financial situation was not sufficiently precarious to justify the appointment of a receiver and that it should have a full opportunity to challenge the appointment. We agree. And that is precisely the opportunity it had in federal court. The mere fact that its challenge to the receiver's appointment had to be framed with reference to section 1729(c)(2)'s requirements rather than by way of a challenge to the Commissioner's exercise of his state authority is not significant. Both challenges required Telegraph to establish that it was not insolvent or operating in a manner which put its depositors' money at risk. It had this opportunity in federal court and failed. Full judicial review has been granted.

B. The Withdrawal Requirement

Section 1729(c)(2)(C) requires that "one or more of the holders of withdrawable accounts . . . is unable to obtain a withdrawal of his account . . . ." 12 U.S.C.

§ 1729(c)(2)(C). The district court held that this requirement had no meaning independent from subsection (A), requiring that the association be closed by or under state law, because "once an association is closed, no depositor can get his money."[5] *Telegraph Savings & Loan Ass'n v. Federal Savings & Loan Insurance Corp.*, No. 80 C 2792, slip op. at 17 (N.D. Ill. June 9, 1981).

Emphasizing that a statute must not be construed so as to render certain provisions superfluous, Telegraph challenges the district court's conclusion that subsection (C) is automatically satisfied whenever an association is closed. It asserts that Congress amended section 1729(c) to include the withdrawal requirement in order to limit FHLBB's authority to appoint the FSLIC receiver. Telegraph maintains that FHLBB's authority is triggered only in those situations where the association is in such financial distress that it lacks funds to honor withdrawal requests and an insurance payout is necessary to preserve public confidence and to prevent undue hardship on the account holders. It argues that the ruling that subsection (C) is "mere surplusage is impossible to square with the fact that this provision was added by Congress by amendment to a bill that already contained the first requirement that the association be closed by and under state law." Appellant's br. at 23.

Appellees respond that the interpretation that requirement (C) is automatically satisfied whenever an association is closed does not mean that this subsection is superfluous. They note that requirement (C) was added at the same time that requirement (A) was amended and maintain that both amendments must be construed together. Subsection (A) was amended to permit the FHLBB to appoint the FSLIC receiver whenever a receiver had been appointed by an authority other than the FHLBB and that appointment has been in effect for at least fifteen consecutive days. Under appellees' interpretation, subsection (C) has independent significance in a

[5] The *Fidelity* court reached the same conclusion.

situation where a state commissioner takes custody of an association for the purpose of operating it. In this situation the statute permits the FHLBB to make a receivership appointment after fifteen days even though the state commissioner is still attempting to operate the association, only in the event that a depositor is unable to obtain a withdrawal. Thus, appellees believe subsection (C)'s purpose is to confine the FHLBB's intervention to situations where depositors are unable to withdraw their money despite the state commissioner's efforts to keep the institution open.

The legislative history supports appellees' construction. In discussing the amendments to subsections (A) and (C) the committee stated:

> the committee amendment requires the Board to find that the shareholders are unable to obtain a withdrawal of their savings in whole or in part. The Board must also wait for at least 15 days from the time the State has appointed a receiver before the FSLIC can be appointed as receiver. This is intended to confine the use of the Board's authority to the most urgent situations and to preclude FSLIC receivership in those cases where State authorities have appointed a receiver or conservator for only a brief period.

S. Rep. No. 1263, 90th Cong., 2d Sess., reprinted in 1968 U.S. CODE CONG. & AD. NEWS 2530, 2541. These comments indicate that subsection (C)'s withdrawal requirement and subsection (A)'s fifteen day requirement go hand in hand. Subsection (C) clearly is not superfluous.

The fact that subsection (C) is not "mere surplusage" does not mean, however, that the withdrawal requirement must have independent significance in a situation where state and federal authorities are cooperating in the closing and appointment of receiver. The withdrawal requirement, like the closure precondition, is, under the circumstances here, "substantially a ceremonial formality." *Fidelity Savings & Loan Ass'n v. Federal Home Loan Bank Board*, 689 F.2d 803, 813 (9th Cir. 1982).

Accordingly, we agree with the district court that subsections 1729(c)(2)(A) and 1729(c)(2)(C) have been satisfied.

II

We next consider the trial errors Telegraph assigns. The issue at trial was whether one of the grounds enumerated in 12 U.S.C. § 1464(d)(6)(A) existed at the time the FSLIC was appointed. Section 1464(d)(6)(A) specifies five grounds for the appointment of a receiver. The FHLBB relied on two of these grounds: (i) insolvency and (ii) an unsafe or unsound condition to transact business. Since the more complicated issue of whether Telegraph was unsafe and unsound would never have to be considered if Telegraph was found to be insolvent, the trial judge limited the trial to the insolvency issue.

The gravamen of Telegraph's complaint is that the trial court erred in applying the statutory test of insolvency because the test, *"whether it is required by the language of the Statute or not, is economically and financially irrational in application."* Appellant's br. at 34 (emphasis in the original). Telegraph also contends that the statute unconstitutionally violates its property and contract rights.

Additionally, Telegraph challenges numerous trial rulings. It asserts that the trial judge unduly restricted the scope of trial by excluding the issue of whether the FHLBB reasonably rejected the Heron Proposal and by preventing discovery on FHLBB's policies and practices with respect to other state institutions. These exclusions, Telegraph contends, deprived it of the only effective means of proving that the FHLBB's application of the statutory insolvency test was arbitrary or irrational. It also contends that the trial judge did not accord Secretary Mehle's testimony the great weight to which it was entitled, or apply the correct standard of review to the constitutional challenge. Finally, it claims that the attorneys for the federal agencies should have been disqualified.

A. The Book Net Worth Standard of Insolvency.

The FHLBB employed the book net worth test to determine that Telegraph was insolvent. Under this test liabilities are subtracted from assets valued at book value. The trial judge held that FHLBB's method of calculations was permissible under 12 U.S.C. § 1464(d)(6)(A), which provides that insolvency is computed by subtracting "obligations to its creditors and others" from "assets of association." Section 1464(d)(6)(A) does not specify what constitutes "obligations" or how to value "assets."

Telegraph contends that the book net worth test does not comply with section 1464(d)(6)(A) because it does not accurately evaluate an institution's financial stability. It argues that in order to conform to the statute's purpose of predicting the degree of risk to FSLIC funds, assets must be valued at fair market value and obligations should include only those liabilities currently due. Under Telegraph's definitions obligations do not include deferred taxes or deferred loan fees. Had the FHLBB defined assets and obligations as urged by Telegraph, it could not have found Telegraph insolvent on the day of the takeover.[6]

At trial Telegraph introduced statistics to support its contention that an institution's book net worth bears no relationship to its true net worth. It buttressed these statistics with the testimony of the Assistant Secretary of the Treasury for Domestic Finance, Roger W. Mehle. Mehle testified that it was his personal belief that the book net worth test of insolvency was meaningless. Based on this evidence, Telegraph insisted that the FHLBB's method of computing insolvency was "unique," "irrational" and "prejudicial."

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[6] Telegraph had more than eleven million dollars in liquid assets at the time Bacon attempted to withdraw twenty-five dollars.

The trial judge held that the book net worth method of evaluating an institution was valid under section 1464(d)-(6)(A) and, hence, that the FHLBB's determination that Telegraph was insolvent on the day of its closure was reasonable. He noted that an agency's interpretation of a statute is entitled to a presumption of validity and emphasized that although Congress revised section 1464(d) in 1966 and again in 1978, it has never altered the subsection granting the FHLBB authority to appoint a receiver after a determination that an institution is insolvent. The court also noted that since 1954 the FHLBB has been computing insolvency based on financial data contained in Monthly Reports which savings and loan associations prepare and file and that these reports reflect the total book value of an association's assets and its total liabilities.

The trial judge rejected Telegraph's definitions of the terms "obligations" and "assets." In so doing, he relied heavily on the testimony of Kenneth Scott, former general counsel of FHLBB. Telegraph believes that the trial judge should have placed more reliance on the testimony of Assistant Secretary Mehle. We may not, however, set aside a trial court's findings, particularly where those findings are based primarily upon the credibility of witnesses, unless those findings are clearly erroneous. *Lee v. National Can Corp.*, No. 81-2944, slip op. (7th Cir. Feb. 8, 1983). While reasonable people may differ as to which witnesses were more credible, we cannot say that the trial judge's reliance on witnesses other than Mehle[7] was clearly erroneous.

Based on an analysis of testimony from witnesses on both sides, the legislative history and "generally accepted

[7] We also have considered Telegraph's argument that Mehle's testimony reflects official Treasury policies and, thus, should be construed as admissions against the federal agencies. This argument is without merit. Since Mehle testified in an individual, rather than official, capacity his remarks cannot be imputed to the federal agencies.

accounting principles and regulatory accounting principles," *Telegraph Savings & Loan Ass'n v. Federal Savings & Loan Insurance Corp.*, No. 80 C 2792, slip op. at 7 (N.D. Ill. Feb. 19, 1982), the trial judge held that "obligations" includes all liabilities. He emphasized that since 1954 the FHLBB has valued an association's assets at book value and that Congress had never attempted to pass a statute requiring the FHLBB to value an association's assets in a different manner. For this reason, the trial judge concluded that valuation at book value was proper. Accordingly, he held that the FHLBB's construction of section 1464(d)(6)(A) was consistent with congressional intent and the statutory language.

We believe the trial court's analysis is correct. Telegraph's assertion that the statute is "unique" or "irrational" is a legislative matter for Congress to address and is irrelevant to the resolution of this controversy. The statute requires the FHLBB to determine if an association is insolvent by subtracting its obligations from its assets. The FHLBB's definitions of "assets" and "obligations" comply with the statutory mandate. Accordingly, regardless of whether Telegraph agrees with the statutory test, it is the law and we are bound by it.

We also reject Telegraph's contention that even if the FHLBB's construction of the statute accurately reflected whether an association was insolvent in 1954 the book net worth test has since become invalid because of changes in the circumstances to which it applies. Telegraph emphasizes that in 1954, when section 1464(d)(6)(A) was drafted, most of an association's accounts were regular passbook accounts. Since these accounts were not subject to any penalty, all interest accrued was actually paid out. Thus, the book value and market value of an association's assets were approximately the same. Today, because the commonly held accounts are certificate or term accounts rather than regular passbook accounts, the book value is considerably higher than market value. While for accounting purposes the interest on these term accounts is recorded as liabilities, many of these term accounts are

redeemed before their maturity dates and because of the penalty attached to early redemption, the association pays less interest than the recorded liabilities. Therefore, assuming *arguendo*, that valuing assets at book minus total liabilities accurately reflected an association's financial stability when most of the association's accounts were regular savings accounts, Telegraph insists it does not do so when the nature of the accounts has changed.

We cannot agree. The fact that Congress has never attempted to change the method the FHLBB uses to compute insolvency is strong evidence that Congress intended insolvency to be determined by the book net worth test. Telegraph would have us redraft the statute to conform to its idea of economic policy. Our task, however, is to enforce the law as Congress saw fit to enact it.

We believe the trial judge properly concluded that the FHLBB may, consistent with the statute, compute insolvency in terms of negative net worth, based on a valuation of assets at book value. Accordingly, the FHLBB's calculations, arrived at by subtracting all liabilities from the book value of all the assets, were reasonable.[8]

B. The Constitutional Challenge

Telegraph also challenges section 1464(d)(6)(A) on substantive due process grounds. It asserts that FHLBB's authority extends only to situations involving possible risk to FSLIC insurance funds and reasons that the receivership criteria set forth in section 1464(d)(6)(A)(i), and incorporated by section 1729(c)(2)(B), do not accurately reflect

[8] Telegraph also challenges other trial court rulings. It maintains that: (1) the issue of whether the FHLBB properly rejected the Heron Proposal should not have been excluded from trial; (2) the receivership should not be evaluated according to notions of "trends in operating losses" and "public confidence"; and; (3) counsel for the federal agencies should have been disqualified. We have carefully examined these arguments and find them to be without merit.

whether an institution is insolvent. Telegraph maintains that since the criteria do not indicate when FSLIC funds are at risk, appointment of the FSLIC as receiver according to these criteria violates its substantive due process right.

In analyzing the statute's constitutionality the district court stated that the statute was not violative of substantive due process if it was rationally based and free from invidious discrimination. It concluded that the statute was not unconstitutional because application of the book net worth test is a rational means of protecting FSLIC insurance funds.

Telegraph contends the trial court should have applied a higher standard of review. Yet, although Telegraph claims the trial judge improperly relied on *New Orleans v. Dukes*, 427 U.S. 297 (1976), and *Breard v. City of Alexandria*, 341 U.S. 622 (1951), to support the application of a minimal standard of review to the constitutional challenge, it cites no authority for its contention that the rights involved in this case are property and contract rights requiring strict scrutiny. Nor does it offer any argument to refute the trial judge's conclusion that "[t]he right to do business has never been considered a fundamental right." *Telegraph Savings & Loan Ass'n v. Federal Savings & Loan Insurance Corp.*, No. 80 C 2792, slip op. at 17 (N.D. Ill. Feb. 19, 1982). Finally, Telegraph fails to explain why *United States v. Central Eureka Mining Co.*, 357 U.S. 155 (1958), on which the trial judge heavily relied, does not control.

In *Central Eureka Mining Co.* the government ordered all non-essential gold mines closed in order to free the machines for war-related work. Central Eureka's challenge to the governmental action on substantive due process grounds failed. Applying *Central Eureka* to this case, the trial judge noted, "[i]f a substantive due process challenge to government action that effectively took control over the deployment of the assets of a business is evaluated by the rational basis test, we doubt that a

stricter standard of review is warranted in this case." *Telegraph Savings & Loan Ass'n v. Federal Savings & Loan Insurance Corp.*, No. 80 C 2792, slip op. at 18 (N.D. Ill. Feb. 19, 1982).

We agree that *Central Eureka Mining Co.* controls. Accordingly, the statute is properly evaluated by the rational basis test. Since we have already determined that the statutory test for insolvency may reasonably be said to reflect an association's degree of financial stability, which, in turn, reflects the degree of risk posed to FSLIC insurance funds, the statute satisfies the rational basis test.

III

Telegraph claims that Judge Marshall erred in refusing to sever and remand the state law counts against the Commissioner. It also asserts that Judge Marshall's determination that the state claims were "part and parcel" of the federal action was contradicted by Judge Grady's later ruling that a challenge to the Commissioner's action should be litigated in state court. Telegraph maintains that these two rulings operated to deny it the right to challenge the Commissioner's ex parte state action, a right which is granted by ILL. REV. STAT. ch. 32, § 852. Telegraph complains that as a result of the two contradictory rulings it has no forum in which to challenge the Commissioner's finding that there was an emergency situation justifying a takeover without prior written notice.

We find nothing contradictory in the two rulings. Judge Marshall refused to remand the claim against the Commissioner because he believed that all Telegraph's claims were part of its challenge to the FHLBB's appointment of the FSLIC as receiver and that a challenge to a federal receivership could be maintained only in federal court. Judge Grady held that review of state law questions was not part of an action to challenge a receiver under 12 U.S.C. § 1729(c)(2). The fact that Judge Grady

dismissed the separately pleaded state law counts without prejudice merely indicates that these claims are independent of Telegraph's challenge to a federal receivership under federal law. The dismissal cannot be read as a ruling on the validity of the state claims.

Telegraph's real complaint is that the state court judge dismissed Telegraph's second state court action because he read Judge Marshall's dismissal to mean that the state court had no jurisdiction to hear the state claims. Whether Telegraph has a state cause of action is properly left to the state court. Neither Judge Marshall's ruling nor Judge Grady's ruling is binding on the state court. Since the state court dismissal is currently on appeal we leave it for the state appellate court to determine if Telegraph has any valid state claim.

We hold that Judge Grady's ruling and Judge Marshall's ruling are not in conflict and in no way operate to deny Telegraph a forum in which to challenge the propriety of the Commissioner's action under state law.[9]

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[9] Telegraph also raises arguments with respect to Counts I, II, IV, VI, IX, and X. Counts I and II, which were dismissed without prejudice by Judge Grady, contained state law claims against the Commissioner. Count IV alleged a *Bivens* action, *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), and a 42 U.S.C. § 1983 claim. Count VI contained a charge against Schilling for misrepresentation. Count IX stated an unlawful creditor preference claim and Count X pled a shareholder derivative action. With the exception of the § 1983 claim in Count IV, these counts were dismissed. The § 1983 claim in Count IV was retained and stayed, pending resolution of the state claims in state court. We have examined Telegraph's arguments with respect to each of these counts and find them to be without merit. The district court properly dismissed all claims except the § 1983 claim.

IV

For all the reasons detailed above, the decision of the lower court is

AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TELEGRAPH SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

v.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, et al.,

Defendants.

No. 80 C 2792

ORDER

The court has requested the parties to address the question of what should be done with the remaining counts of the second amended complaint, now that judgment has been entered in favor of defendants on Counts III and V. After due consideration, our disposition of the remaining counts is as follows:

COUNTS I AND II

Counts I and II combine state law claims with claims under 42 U.S.C. § 1983 and present novel questions of state statutory construction which are neither addressed nor resolved by the findings of the court on Counts III and V. Accordingly, we exercise our discretion to refuse jurisdiction over the state law claims in these pendent

counts and these claims are dismissed without prejudice for lack of jurisdiction. We will stay the trial of the federal claims until the state court has disposed of the state law claims.

COUNT IV

Count IV is an action under 42 U.S.C. § 1983, alleging that the federal defendants conspired under color of state law with state defendants to violate plaintiff's property rights. Named in this count are the individual defendants Janis, Dolton and DiPrete as well as the agency defendants Federal Home Loan Bank Board and Federal Savings and Loan Insurance Corporation. The agency defendants are not proper parties since they cannot be sued *eo nomine* unless Congress has explicitly or impliedly made the agency subject to such suits. *Blackmar v. Guerre*, 342 U.S. 512 (1951); *Benima v. Smithsonian Institute*, 471 F.Supp. 62, 66-67 (D. Mass. 1979); 1 *Moore's Federal Practice*, ¶0.65[2.-1] at pp. 700.87-.88. Accordingly, the defendants FHLBB and FSLIC are dismissed from Count IV for lack of jurisdiction.

It is possible that Count IV is based upon a *Bivens* theory as well as § 1983, but the federal agencies are not proper parties under a *Bivens* claim either. *United States v. Testan*, 424 U.S. 392 (1976).

Turning to the individual defendants in Count IV, there is no *Bivens* action if all the conduct complained of is alleged to have been in complicity with state officials. In that event, § 1983 provides an adequate remedy and there is no need to imply a constitutional cause of action. *See Neely v. Blumenthal*, 458 F.Supp. 945 (D.D.C. 1978). *See also Thedford v. Joyce*, No. 79 C 3061, Slip Op. at 6 (N.D. Ill. June 8, 1980) and cases cited therein. Accordingly, if Count IV does attempt to allege a *Bivens* claim against the individual federal defendants, that claim is dismissed.

What remains of Count IV is the § 1983 action against the individual federal defendants. We reject defendants' argument that they are entitled to absolute immunity

under the reasoning of *Butz v. Economou*, 438 U.S. 478, 515-516 (1978). In describing those executive officials who perform functions "analogous to a prosecutor" and thus should enjoy absolute immunity, the Court emphasized that the acts of these officials would be subject to scrutiny and review in the very proceedings in which the challenged action took place:

> The defendant in an enforcement proceeding has ample opportunity to challenge the legality of the proceeding. An administrator's decision to proceed with a case is subject to scrutiny in the proceeding itself. The respondent may present his evidence to an impartial trier of fact and obtain an independent judgment as to whether the prosecution is justified. His claims that the proceeding is unconstitutional may also be heard by the courts. Indeed, respondent in this case was able to quash the administrative order entered against him by means of judicial review. See *Economou v. U.S. Department of Agriculture*, 494 F.2d 519 (CA2 1974).
>
> We believe that agency officials must make the decision to move forward with an administrative proceeding free from intimidation or harassment. Because the legal remedies already available to the defendant in such a proceeding provide sufficient checks on agency zeal, we hold that those officials who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity from damages liability for their parts in that decision.

438 U.S. at 515-516. These safeguards are absent here, where the plaintiffs had no opportunity to challenge the seizure and sale of Telegraph until after the sale had been completed. We understand *Butz* to require a look at the facts of the particular case, and we believe the individual federal defendants in this case enjoy only a qualified immunity. *Butz*, 438 U.S. at 407; *Scheuer v. Rhodes*, 416 U.S. 232, 247-248 (1973). The allegations of § 1983 violations by the individual federal defendants are therefore not subject to dismissal. However, our decision on

many of the questions involved in Count IV depends on resolution of state law questions upon which Counts I and II are based. Accordingly, trial of the § 1983 claims of Count IV will be stayed pending state court resolution of the issues framed by Counts I and II.

Count VI

Count VI, which is apparently directed against all federal defendants and the defendant Schilling, seek money damages[1] based upon misrepresentation concerning defendants' intentions in regard to the appointment of a receiver. The count must be dismissed as to the federal defendants because the exclusive damage remedy is the Federal Tort Claims Act and that Act contains a specific exception for "any claim arising out of . . . misrepresentation, deceit, or interference with contract rights." 28 U.S.C. § 2680(h). We decline to take pendant jurisdiction of the state law misrepresentation claim against Schilling, and thus dismiss Count VI as to him, without prejudice, for lack of jurisdiction.

Count VII

Count VII alleges that the federal defendants disposed of plaintiff's assets without the required statutory notice. Defendants suggest that this count should be dismissed under *Chapman v. Sheridan-Wyoming Co.*, 338 U.S. 621, 629-31 (1950), and request that a briefing schedule be set. We do not understand *Chapman* to be dispositive, but agree that a briefing schedule is needed. Defendants may file a brief within 14 days. Plaintiffs may respond within 14 days thereafter and plaintiffs may have 10 days for reply. Briefs shall be limited to 15 pages.

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[1] The only equitable relief prayed for in the complaint is removal of the receiver and rescission of the sale. As we stated in prior opinions, the only cause of action for removal of the receiver arises under 12 U.S.C. § 1464(d) and that claim has already been adjudicated in Count III. Thus, the only relief available to plaintiffs under the other counts (excluding Count VII, perhaps) is monetary.

Count VIII

"Count VIII" asserts no present claim but describes plaintiffs' intention to amend to assert a claim under the Federal Torts Claims Act once they have exhausted their administrative remedy. Since Count VIII in its present form does not state a cause of action, it is dismissed.

Count IX

Count IX alleges that the sale of Telegraph to First Federal Savings and Loan Association constituted an unlawful creditor preference. In *Lanigan v. Apollo Savings*, 52 Ill.2d 342, 288 N.E.2d 445, 450 (1972), the Court stated that "Basically, permanent reserve shares are risk capital and function as protection for withdrawal capital accounts." As investors of "risk capital," plaintiffs are not creditors. Count IX is dismissed for failure to state a claim.

Count X

Count X is a general re-allegation of the conduct complained of in the other counts. It seeks as relief a declaratory judgment that such conduct was illegal, the removal of the receiver, a rescission of the sale of the assets, money damages and attorneys fees. For the reasons stated in connection with the other counts, Count X must be dismissed. The exclusive cause of action for removal of a receiver is that already adjudicated in Count III. Moreover, the receiver is no longer in control of Telegraph, so the prayer for removal of the receiver seems moot.

The claim for money damages can only be brought under the Federal Tort Claims Act, and such a claim is either barred by the exception for misrepresentation or by the fact that plaintiffs have not exhausted their administrative remedy.

The claim for rescission of the sale of assets is already contained in Count VII, which is pending.

The prayer for attorneys fees does not require a separate count, because if attorneys fees are proper, they can

be awarded on one of the other remaining substantive counts.

Accordingly, Count X is dismissed.

In summary, the only counts which remain are Counts IV as against the individual federal defendants and Count VII against the federal defendants. All other counts are dismissed as indicated.

The court will certify appropriate issues for appeal pursuant to 28 U.S.C. § 1292(b) in connection with the judgment on Counts III and V and will consider certifying any other issues the parties believe are appropriate for review at this time. The parties are invited to submit within 10 days their suggested draft orders of certification, specifying with particularity those issues which satisfy the requirements of § 1292(b).

DATED: Mar. 18, 1982

ENTER: /s/ JOHN F. GRADY
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 80 C 2792

TELEGRAPH SAVINGS AND LOAN ASSOCIATION, et al.,

Plaintiffs,

v.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, et al.,

Defendants.

MEMORANDUM OPINION

This is an action brought by Telegraph Savings & Loan Association ("Telegraph" or the "Association") to remove the Federal Savings & Loan Insurance Corporation ("FSLIC") as receiver of its assets and to obtain equitable and monetary relief for harm suffered as a result of the sale of those assets. The complaint is in ten counts and alleges causes of action under a variety of state and federal statutes and constitutional provisions. On June 9, 1981, this court ordered that Count III (which contained the claim that the FSLIC was unlawfully appointed receiver of its assets) be severed from other counts and set for expedited trial.

Trial of Count III began on September 10, 1981, and ran with interruptions through January 7, 1982. The court heard nearly a dozen witnesses, most of them experts in the fields of finance, savings and loan associ-

ations, and accounting. Having considered the testimony and exhibits offered, the court is of the opinion that the FSLIC was lawfully appointed receiver of Telegraph's assets. For the reasons set forth below, we therefore deny the Association's application to remove that agency as receiver.

I. Background

As we discussed in our summary judgment opinion filed June 9, 1981, pursuant to 12 U.S.C. §1729(c)(2) (1980), the Bank Board has "exclusive power and jurisdiction" to appoint the FSLIC receiver for the assets of an insured state savings and loan association in the event that the Bank Board determines:

> (A) that . . . (ii) an insured institution (other than a Federal savings and loan association) has been closed by or under the laws of any State;
>
> (B) that one or more of the grounds specified in paragraph (6)(A) of section 1464(d) of this title, existed with respect to such institution at the time a conservator, receiver, or other legal custodian was appointed, or at the time such institution was closed . . .; and
>
> (C) that one or more of the holders of withdrawable accounts in such institutions is unable to obtain a withdrawal of his account, in whole or in part;

Section 1464(d)(6)(A), referred to in subsection (B) of the foregoing statute, provides that

> The grounds for the appointment of a conservator or receiver for an association shall be one or more of the following:
>
> > (i) insolvency in that the assets of the association are less than its obligations to its creditors and others, including its members: . . . .

In our opinion of June 9, 1981, we held that subsections (A) and (C) of §1729(c)(2) had been satisfied and therefore granted the Bank Board summary judgment. We held, however, that there was an issue of material fact as to

whether Telegraph was insolvent within the meaning of § 1464(d)(6)(A). That issue of fact was as follows: Telegraph had been placed into receivership by the Bank Board on May 22, 1980, on the ground that it was insolvent. The Bank Board had based its determination of insolvency on monthly financial reports filed by the Association with the Bank Board at the end of every month. On April 30, 1980, Telegraph's monthly statement showed that its net worth had fallen to $450,000.00. On May 19, Telegraph's comptroller projected that between May 1 and May 19 the Association had lost over $590,000.00 and that it would lose nearly $1 million for the entire month. On the basis of the comptroller's projections, the Bank Board determined that the Association was insolvent within the meaning of § 1464(d)(6)(A)(i) on May 22, 1981, and that it was therefore eligible for receivership on that day. In opposition to the motion for summary judgment, Telegraph submitted affidavits indicating that the Board's projections were speculative and arbitrary. Although we thought there were strong indications that the defendants' projections were reasonable, we held nonetheless that plaintiffs were entitled to present evidence at trial on the question.

At trial, defendants took a different, and surprising, tack. Rather than dispute the reasonableness of the Bank Board's projections, plaintiffs chose to dispute, by way of an attack on the Board's interpretation of § 1464(d)(6)(A)(i), the *method* by which the Board computed insolvency. When, for reasons set forth below, these challenges to the Bank Board's interpretation of the statute ran into difficulty, plaintiffs mounted a constitutional attack on the statute. Plaintiffs now rely chiefly on this constitutional challenge.

We first address the challenges to the Bank Board's interpretation of the insolvency statute and then the constitutional issues.

II. Challenges To The Bank Board's Construction of § 1464(d)(6)(A)(i)

Section 1464(d)(6)(A)(i) provides that

> The grounds for the appointment of a conservator or receiver for an association shall be one or more of the following: (i) insolvency in that the assets of the association are less than its obligations to its creditors and others, including its members; . . . .

12 U.S.C. § 1464(d)(6)(A) (1980).

The Bank Board has consistently interpreted this statute as defining insolvency in terms of negative net worth based on a valuation of assets at book value. Thus, in determining whether an association is insolvent, the Bank Board merely subtracts all liabilities from the book value of all the assets. If the result is less than zero, the association is considered insolvent within the meaning of the statute.

Plaintiffs asserted that the statute contains certain ambiguities. Specifically, they argued that the terms "assets" and "obligations" are susceptible to interpretations other than the Board has given them and that these other constructions are more consistent with the intent of the statute.

The Bank Board's authority to interpret § 1464(d)(6)(A) is derived from § 1464(a)(1) of the same title. That section states that

> In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations . . . .

Section 1464(d)(1) also gives the Bank Board the "power to enforce this section and the rules and regulations made hereunder."[1]

We decide questions of statutory construction in this case with due respect for the "venerable principle that the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially when Congress has refused to alter the administrative construction. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 381 (1969); *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86, 94-95 (1973). The degree of deference is enhanced where the agency participated in the development of the statute it administers, *Miller v. Youakim*, 440 U.S. 125, 144 (1979), where the agency has applied the challenged construction consistently over a number of years, *United States v. National Association of Security Dealers*, 422 U.S. 694, 719 (1975); *N.L.R.B. v. Boeing Co.*, 412 U.S. 67, 75 (1973), and where "Congress has re-enacted the statute without pertinent change. In these circumstances, congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress." *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267, 275 (1974). Finally, we note that "[w]e need not find that the construction is the only reasonable one, or even that it is the one we would have reached had the question arisen in the first instance in judicial proceedings." *Unemployment Compensation Commission of Alaska v. Aragon*, 329 U.S. 143, 153 (1946). *See also Train v. Natural Resources Defense Council, Inc.*, 421 U.S. 60, 75 (1975).

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[1] Section 1464(d)(6)(A) also provides that "[i]f, in the opinion of the Board, a ground for the appointment of a conservator or receiver as herein provided exists," the Board is authorized to make such an appointment. The language "in the opinion of the Board" is further evidence of Congress' intent to delegate interpretation of the statute to the Board.

Before evaluating plaintiffs' statutory construction arguments, we briefly describe the legislative history of § 1464(d)(6)(A)(i). This section was added to Title 12 in 1954 with the advice of the Bank Board itself.[2] Despite the fact that Congress generally revised § 1464(d)(6) in 1966 and made smaller revisions of § 1464(d) in 1978,[3] it has never revised the subsection giving the Bank Board the power to appoint a receiver when an association is insolvent. Further, evidence presented at trial indicated that the Bank Board has at least since 1954 consistently based its evaluation of the financial status of associations on financial data contained in so-called "Monthly Reports."[4] These reports contain entries for the total book value of an association's assets and its total liabilities. In view of the legislative history of § 1464(d)(6)(A)(i), the Bank Board's interpretation of that statute carries with it a very great presumption of validity.

We now examine each of plaintiffs' statutory construction arguments. Plaintiffs' first theory exploited an asserted ambiguity in the statutory term "obligations." An institution is insolvent under the statute if the "assets of an association are less than its obligations." Plaintiffs' first witness insisted that the term "obligations" was deliberately chosen instead of the word "liabilities" and that it has a narrower meaning than "liabilities." Obligations, the witness contended, are those liabilities that do not arise until the instant they are due and payable. The ramifications of this distinction, if it held water, were substantial. Time deposits, for example, comprised

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[2] Sen. Rep. No. 1472, 83rd Cong., 2d Sess., *reprinted in* [1954] U.S. Code Cong. & Ad. News 2723. A similar provision was contained in the Home Owner's Loan Act of 1933. *See* Fahey v. Malonee, 332 U.S. 245, 250-253 n. 1 (1947).

[3] *See* Sen. Rep. No. 1482, 89th Cong., 2d Sess., *reprinted in* [1966] U.S. Code Cong. & Ad. News 3532. Sen. Rep. No. 95-1273, 95th Cong., 2d Sess., *reprinted in* [1978] U.S. Code Cong. & Ad. News 9273.

[4] Tr. 1001 (Kenneth Scott).

a large percentage of Telegraph's portfolio. Only a fraction of these time deposits came due on May 22, the date Telegraph was placed in receivership. If holders of time deposits that were due after May 22 came in on that day to withdraw their money, they would suffer substantial penalties. Assuming all such depositors appeared at once on May 22, the Association's obligations would be by virtue of the penalties $2,850,000.00 less than if the certificates were held to maturity. Tr. 184. If these deposits are not considered "obligations" in their full amount as of May 22, Telegraph was solvent on that date by a whopping amount of $2.5 million.

The theory was discredited, however, by witnesses for both sides. First, it became apparent that "obligations" is treated within the accounting profession as a more general term than "liabilities"[5] and that while many "obligations" of a firm are not "liabilities," all "liabilities" are "obligations." Second, the same witnesses took issue with the proposition that obligations become such only at the instant they become due. Both generally accepted accounting principles and regulatory accounting principles require that books be kept on an accrual basis. That is,

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[5] A publication of the Financial Accounting Standards Board, "Statement of Financial Accounting Concepts No. 3" (December 1980), Defendants' Exhibit 6, states that liabilities "are future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions or events." At 13. Obligations are defined in the same manual as follows: "Obligations is used with its usual general meaning to refer to duties imposed legally or socially to that which one is bound to do by contract, promise, moral responsibility. It includes equitable and constructive obligations as well as legal obligations." At 12 n. 14. The manual then compares "liabilities" with "obligations:" "Although most liabilities rest generally on a foundation of legal rights and duties, existence of a legally enforceable claim is not a prerequisite for an obligation to qualify as a liability if the future payment or other transfer of assets to settle the obligation is otherwise probable." At 13.

revenues and expenses are allocated at time periods to reflect an enterprise's performance during those periods rather than merely listing receipts and expenses at the moment they occur. Tr. 587. Counting as obligations only those debts that come due at a given moment is totally inconsistent with accrual accounting. Moreover, according to plaintiffs' theory, an association could be solvent one moment before crushing obligations became due and insolvent the moment after. Plaintiffs' theory would prevent the Bank Board from taking action until the fatal moment had passed. There is no reason to believe that Congress intended to hamstring the agency in this way.[6] Finally, Kenneth Scott, a former general counsel of the Bank Board, testified that the broader term "obligations" might have been used instead of "liabilities" because of the peculiar nature of savings and loan associations. In 1954, when the insolvency section of the receivership statute was passed, most associations were mutual; that is, they were owned by their depositors ("members") who were not considered creditors, had no legal right to interest, and no legal right to withdraw their money at will. *See generally Wisconsin Bankers Association v. Robertson*, 190 F. Supp. 90, 92 (D.D.C. 1960), *aff'd* 294 F.2d 714 (D.C. Cir. 1961), *cert. denied*, 368 U.S. 938. Mr. Scott testified that by using the broad term "obligations" the statute encompasses not only the obligations owed conventional creditors, but also the amounts due depositors.

Plaintiffs' second statutory construction argument also focuses on the term "obligations." Here, plaintiffs contended that Congress did not intent to charge an association with liabilities that are mere accounting entries the association will never have to pay. Plaintiffs point to two such items: deferred income taxes and deferred loan fees.

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[6] Additionally, it became clear at trial that if plaintiffs had similarly eliminated from the left side of the balance sheet those assets that were not due them precisely on May 22, 1980, they would still have been insolvent. Defendants' Exhibit 13.

Telegraph argues that deferred taxes should not have been considered since they had lost money in the past few years and would have continued to lose money in the future. Since it would have had no foreseeable income, the Association should not have been charged with deferred income taxes. However, the matter is not that simple. The fact that an association has a loss in a particular year does not determine what deferred tax entry is required on its balance sheet for that year. Under the applicable tax law, the effect of a loss in a particular year may not be known for several years. *See generally* Defendants' Exhibit 13, "Accounting Principles Board Opinion No. 11: Accounting For Income Taxes" (December 1967). Such a determination may be made only after extensive audit procedures. Again, we do not think Congress intended to stay the Bank Board's hand until its team of accountants wrestled with highly complex tax calculations.

Telegraph also argues that it should not have been "charged" with deferred loan fees. The argument implies that the unearned portion of the loan fees was treated as a liability of the association when it was in fact an asset. The simple answer to this is that the deferred loan fees were not treated as something the Association owed but rather as an offset to an asset. This correctly depicted the fact that the Association would earn its loan fee in increments over the life of the loan, not all at once in the year the loan was made.

We turn now to Telegraph's third statutory construction argument. Telegraph claims that "assets" should be read to mean "liquid assets" and "obligations" to mean those obligations coming due on a given day. This argument may be readily disposed of. The construction of "assets" and "obligations" proposed by Telegraph would radically alter the plain meaning of the statute. As it reads, the statute sets forth some fashion of net-worth or balance sheet definition of insolvency; that is, insolvency is determined simply by subtracting liabilities from assets. It is this definition that is used in the Bankruptcy

Code, 11 U.S.C. § 101(26) (1979).[7] Plaintiffs propose a liquidity or "equitable" definition of insolvency, such as that appearing in the old Bankruptcy Code, 11 U.S.C. § 205(a) (1976). Their argument presumes, of course, that Congress was unable to state explicitly the liquidity definition when it wanted to. The presence of the liquidity test in the old Bankruptcy Act and in a number of other statutes entirely destroys this premise. *See, e.g.*, Farm Credit Act of 1971, 12 U.S.C. § 2183(b) (1980); Securities Investor Protection Act Amendments of 1978, 15 U.S.C. § 78eee(b)(1)(A).

Moreover, it should be clear by now that in construing § 1464(d) the court will not embrace a construction that will hamper the Bank Board in the vigilant exercise of its authority to protect depositors and its insurance fund. Plaintiffs admitted at trial that an association could be in very bad shape financially, yet still be able to meet the liquidity test of insolvency.

We turn now to Telegraph's final challenge to the Bank Board's interpretation of the statute. Here Telegraph claims that the term "assets" must be read to mean "assets valued at fair market" rather than "assets valued at book."[8] Though this contention was somewhat longer lived than plaintiffs' previous three, we reject it also. Evidence at trial showed that in 1954 interest rates were so low that, for all practical purposes, book and market values for a mortgage were the same. It is doubtful, therefore, that Congress intended that one rather than the other method of valuation be employed. On the other

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[7] The Bankruptcy Code's definition differs from the one used by the Bank Board in that it values the assets of the bankrupt business at "fair value."

[8] Plaintiffs understandably hesitate to adopt this construction of the statute since the fair market value of an association will always be less than or equal to the book value. Nonetheless, there are only two ways to value assets, at book or at market. Plaintiffs' rejection of the book value test requires us to consider the other alternative.

hand, the Bank Board has valued assets at book since the statute was enacted and Congress has not seen fit to amend the statute to require the Bank Board to mark an association's assets to market. These two facts are very persuasive evidence that the Bank Board's construction is consistent with congressional intent.

Congress' failure to replace the book net worth test is particularly significant in light of the 1966 amendments to § 1464(d)(6). At that time, Congress completely overhauled the procedures by which receivers were appointed by the Bank Board. In the Senate Report to the bill, the committee expressly noted that a revision of paragraph (6) was needed to deal with the growing number of institutions that were failing because of the spiralling interest rates:

> Furthermore, the present monetary situation with the extraordinary demands for credit far outrunning the available supply, the resulting upward pressure on interest rates and the consequent compulsion to obtain high yields, often at the risk of loss—have imposed an unusual burden on all financial institutions. It is not surprising that there have been in recent months a few very substantial involuntary liquidations and a few forced mergers.

Senate Report No. 1482, 89th Cong., 2d Sess. (1966), *reprinted in* [1966] U.S. Code Cong. & Ad. News 3532 at 3536-3537. Thus, even though Congress was aware that the mortgage portfolios of many associations were falling behing the market, it did not see fit to compel the Bank Board to abandon the book valuation of assets.

The only evidence indicating that Congress intended that assets be valued at the fair market value was the testimony of Kenneth Scott, the former general counsel to the Bank Board. On direct examination, Mr. Scott assented to the proposition that assets were to be valued at book. On cross, he stated that the assets were intended to be valued at "fair value." When asked if this meant fair market value, he said that it did. On redirect, Mr. Scott attempted to clear up the confusion. Thus he explained that

> The Board's reporting rules have always been on the premise that the associations would report mortgage portfolio in the standard method, which means at book value. There are individual instances in which examiners have gone behind book values to try to ascertain real values, actual market values, and require write-downs. That is done on an individualized basis. It is not the standard practice whereby the associations prepare and report their financial statements.

Tr. at 1002.

We disagree with plaintiffs' contention that Mr. Scott's testimony demonstrates that the Board's construction of the term "assets" is clearly inconsistent with the congressional intent. What the evidence shows is that, at the time the statute was enacted, Congress was not particularly concerned with the distinction between book and fair market valuation of assets, that book value had been consistently used in accounting for the status of financial institutions, that it has been employed by the Board consistently for nearly 30 years save in certain instances in which writedowns have been required and that Congress has not amended the Act to change the Board's practice. Under these circumstances, we defer to the Board's construction of the statute.

III. Application of the Insolvency Test to Telegraph

It is our determination, then, that the statute declares an association insolvent when its obligations, including all its liabilities, are less than the book value of its assets (the "book net worth test"). We now examine whether Telegraph was insolvent according to this definition on May 22, 1980.

In our opinion of June 9, 1981, we explored the evidence of Telegraph's insolvency as of May 22, 1980. Our discussion there was based on the premise that the book net worth test controlled the case. Since that premise has now been confirmed, we simply review the evidence discussed in our earlier opinion.

From July 1, 1979, to April 30, 1980, Telegraph's book net worth steadily declined from nearly $5 million to $450,000.00. The operational losses for April 1980 alone exceeded $734,000.00. On May 19, Telegraph's comptroller made the following projection:

> Based upon my review of the books and records of Telegraph as of May 19, 1980 and taking into consideration my knowledge of the financial circumstances of Telegraph, I estimate that for the period May 1 through 19, 1980, Telegraph had lost $591,778.29 and I projected that for the entire month of May, Telegraph would lose $983,147.86.

Conover Affid., ¶3 (8-26-80). On the basis of the projections of Telegraph's own comptroller, Telegraph had a negative book net worth of approximately $142,000.00 on May 19 and of approximately $240,000.00 on May 22. We note that Telegraph's treasurer estimated that, on the basis of April's operating loss, the Association had a negative net worth of $89,000.00 on May 22, 1980. Seely Affid., ¶15 (8-26-80).

In our opinion on defendants' summary judgment motion, we observed that the book net worth figures up to May 1, 1980, were not disputed. We stated, however, that the Bank Board's projection that Telegraph would have had a negative book net worth on May 22, 1980, was open to question. We also held that the burden of proving that the projection was unreasonable lay upon the plaintiffs. As noted above, however, at trial plaintiffs chose not to attack the reasonableness of the Bank Board's projection of Telegraph's book net worth, but rather the concept of book net worth itself. Defendants successfully repelled plaintiffs' attack on the book net worth test. We now find, in light of plaintiffs' failure to present evidence showing that the Bank Board's projection that Telegraph had a negative book net worth on May 22, 1980, was unreasonable, that the Bank Board's projection was reasonable and that Telegraph was insolvent within the meaning of § 1464(d)(6)(A)(i).

IV. Constitutional Challenge of § 1729(c)(2)

As Telegraph's attacks on the Bank Board's application of the statute have been of increasing generality, it is appropriate that their final argument is directed at the constitutionality of the receivership. It is important at the outset to identify the constitutional objections that Telegraph is *not* making. First, it does not claim that the Bank Board's action constituted a taking of property within the meaning of the Fifth Amendment. Plaintiffs' remedy for a taking is, of course, just compensation. The fair market value of Telegraph's assets, however, was somewhere in the area of negative $30 million.[9] Nor does Telegraph argue that the receivership was a violation of the Contract Clause. That Clause only guarantees against government conduct that impairs contracts, not that which is intended to preserve them.

Rather, it is Telegraph's claim that § 1464(d)(6)(A)(i), which is incorporated by § 1729(c)(2)(B), was applied by the Bank Board in a manner that violated substantive due process. The argument is as follows. The Bank Board took custody of Telegraph under 12 U.S.C. § 1729(c)(2), the statute that gave the Bank Board power to obtain custody over *state* chartered savings and loan associations. The only reason Congress extended the Bank Board's power to receive the assets of state associations was to enable it to protect the assets of the Federal Savings & Loan Insurance Corporation. As we stated at pages 12-13 of our opinion of June 9, 1981, until 1968 the FSLIC was primarily liable on depositors' claims against failing associations but it was seldom given control over the association's assets. Rather, control remained with a state receiver who was not responsible to the federal agency. Section 1729(c) was intended to protect the funds of the FSLIC from dissipation in the hands of a state receiver. Telegraph argues that the Bank Board's test for taking custody of an association under § 1729(c) must be related

[9] Statement of plaintiffs' counsel at final argument, Tr. 21 (January 7, 1982).

to the risk that the association poses to FSLIC's insurance fund. If the receivership criteria do not tell the Board when an association puts the insurance fund at risk, then it is irrational and violative of substantive due process.

Now, says Telegraph, § 1729(c)(2)(B) provides that the Bank Board may take custody of an association if one or more of the grounds specified in § 1464(d)(6)(A) existed. One of these grounds is that the association is insolvent or, according to the Bank Board, that the association have a negative book net worth. It is Telegraph's contention that the negative book net worth test bears absolutely no relation to the purpose of § 1729(c), namely, safeguarding the FSLIC's insurance fund; that is, the mere fact that an institution has a negative book net worth is *no indication whatsoever* that the association imperils FSLIC's insurance fund.

Telegraph claims that the risk to FSLIC's insurance fund can only be gauged by an insolvency formula that is based on the *fair market value* of the failing association. When the FSLIC is appointed receiver of an association, its exposure is equal to the amount that the depositors claim over and above the amount the agency will receive from the liquidation. FSLIC has no choice but to liquidate or sell the association on the open market at its fair market value; thus, the amount of money it will have to pay depositors—that is, the amount by which its funds will be put at risk—can only be determined with reference to the fair market value of the association.

Plaintiffs illustrate the point with a chart showing the book net worth and fair market value of a number of savings and loan associations operating in Chicago. Plaintiffs' Supplemental Post-Trial Brief, Exhibit B. This chart shows that the associations that have the smallest book net worth have the largest fair market net worth and the associations that have the largest book net worth have the smallest fair market net worth.[10] For example,

[10] The following is a sample of every fourth institution appearing on plaintiffs' chart:

(Footnote continued on following page)

Morgan Park Savings & Loan has a book net worth of $23,000.00 and a fair market net worth of negative $569,000.00. Talman Savings & Loan has a book of $112,268,000.00 and a fair market net worth of negative $660,237,000.00. The conclusion Telegraph draws from this chart is that, upon liquidation, those associations with a higher book pose greater risks to FSLIC's insurance fund. In plaintiffs' words,

> [T]he agency's test does not tell the agency when their insolvency risk begins, it does not identify the institutions which pose the insolvency risk, and it

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[10] *continued*

	BOOK NET WORTH	BOOK ASSETS	FAIR MARKET NET WORTH
Morgan Park	23	2,958	(569)
Ft. Dearborn	800	28,646	(4,929)
Allied	1,824	32,516	(4,679)
Central	2,872	70,468	(11,222)
Archer	4,599	42,280	(3,857)
Second	7,170	101,560	(13,142)
Liberty	19,145	259,393	(32,734)
Talman	112,268	3,682,527	(660,237)

(All figures above are in thousands of dollars). The fair market net worth is calculated by discounting the book value of the assets by 20 per cent. Testimony at trial indicated that, at the going interest rates, the discount is between 20 per cent and 30 per cent.

Since fair market net worth is calculated merely by discounting at a fixed rate the book value of an association's assets, those associations with greater book assets will have a greater discount and therefore a smaller fair market net worth. Thus, it should be noted that the rankings of the associations according to book assets and book net worth are virtually identical: The association having the smallest book assets has the smallest book net worth and the association having the greatest book assets has the greatest book net worth.

It is also worth noting that the book value of an association's assets is not a randomly selected figure. The assets of a savings and loan association consist primarily of home mortgages and the book value of these mortgages represents the principal that the mortgagor must eventually repay.

> does not tell them the extent of the insolvency risk posed. It is a truly meaningless comparison of assets and obligations as far as their funds is concerned.

Plaintiffs' Supplemental Post-Trial Brief, p. 12.

Before we evaluate this argument, we briefly discuss the standard of review in substantive due process cases. In order to survive a substantive due process challenge, the government need only show that the statute is "rationally based and free from invidious discrimination." *Richardson v. Belcher*, 404 U.S. 78, 81 (1972), *quoting Dandridge v. Williams*, 397 U.S. 471, 487 (1970). Long ago, Justice Brandeis, in a dissent that has now received the approval of the Court, *see Breard v. City of Alexandria*, 341 U.S. 622, 632-633 (1951), described the role of federal courts in substantive due process cases:

> Our function is only to determine the reasonableness of the legislator's belief in the existence of evils and in the effectiveness of the remedy provided. In performing this function we have no occasion to consider whether all the statements of fact which may be the basis of the prevailing belief are well-founded; and we have, of course, no right to weigh conflicting evidence.

New State Ice Co. v. Liebman, 285 U.S. 262, 286-287 (1932). More recently, the Court has stated that

> [T]he judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines (citation omitted); in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act which cannot stand consistently with the Fourteenth Amendment.

427 U.S. 301, 303-304 (1976).[11]

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[11] The same standard applies to substantive due process claims brought against the federal government under the Fifth Amendment as applies to claims brought against the states under the Fourteenth. Richardson v. Belcher, 404 U.S. 78 (1972).

Plaintiffs argue that a higher standard of review is warranted in this case since it "concerns fundamental constitutional rights such as the right of contract and the right of property ownership." Plaintiffs' Supplemental Post-Trial Brief at 19. This is not the law. The Supreme Court has over the years identified a number of "fundamental rights" which, when implicated by an act of government, trigger heightened judicial scrutiny. Among such rights are the rights to association, *N.A.A.C.P. v. Patterson*, 357 U.S. 449 (1958); to travel, *Shapiro v. Thompson*, 394 U.S. 618 (1969); to vote, *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); to fair criminal process, *Douglas v. California*, 372 U.S. 353 (1963); and to privacy, *Roe v. Wade*, 410 U.S. 113 (1973). The right to do business has never been considered a fundamental right. On the contrary, in a number of cases, the Supreme Court has held that the government may regulate or even *prohibit* an occupation or business without running afoul of the Due Process Clause, provided that the law bears a rational relation to a legitimate purpose.[12] *New Orleans v. Dukes*, 427 U.S. 297 (1976) (upheld law prohibiting street vendors in portions of the city); *Ferguson v. Skrupa*, 372 U.S. 726 (1973) (upheld law prohibiting debt adjustment except by lawyers); *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483 (1955) (upheld law prohibiting sale of prescription glasses by optometrist without a prescription); *Breard v. City of Alexandria*, 341 U.S. 622 (1951) (upheld statute forbidding door-to-door solicitation). In each of these cases, government action drove persons from their businesses and, more likely than not, disturbed numerous contractual relationships. Nonetheless, the government's action was subject only to a rational basis test. Moreover, the scope of the disturbance—whether it is the hot dog vendor in New Orleans who must surrender his pushcart or

[12] In Ferguson v. Skrupa, 372 U.S. 726, 732 (1963), the Supreme Court stated that for substantive due process purposes it was neither "able [nor] willing to draw lines by calling the law 'prohibitory' or 'regulatory'."

the banker in Chicago who must part with a financial empire—is, of course, no consequence under the Due Process Clause.

This point was forcefully made in *U.S. v. Central Eureka Mining Co.*, 357 U.S. 155 (1958). In 1942, the government, in an action that came extremely close to the nationalization of an industry, ordered all non-essential gold mines to close down in order to free the machines for war-related work. Central Eureka sued on the theory that the order constituted a taking for which it was entitled to compensation and on the theory that the law violated substantive due process. In a decision that is more noteworthy for its holding that no taking had occurred, the Court also held that the law was rationally related to a legitimate government objective and, thereby, passed constitutional muster. If substantive due process challenge to government action that effectively took control over the deployment of the assets of a business is evaluated by the rational basis test, we doubt that a stricter standard of review is warranted in this case.

We conclude, then, that the Bank Board's application of § 1729(c)(2) must be judged under the rational basis test.[13]

It is the court's opinion that plaintiffs have failed to show that the book net worth test is a "wholly arbitrary" or irrational means to protect FSLIC's insurance fund.

First, book net worth includes not only the book value of an association's assets, but also the amount of capital

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[13] At final argument the court suggested that under the traditional rational basis test, plaintiffs would have to prove that the legislation bears no *conceivable* rational relationship to a legitimate government objective. *See, e.g.*, U.S. Railroad Retirement Board v. Fritz, 449 U.S. 166, 179 (1981). Plaintiffs hotly dispute the application of this standard, particularly where the legislative history states what Congress thought the relationship was. In view of our finding, *infra*, that the legislation is rationally related to the objectives *in the way Congress intended*, we need not resolve the question of the applicability of the more deferential standard to this case.

invested by the owners. In any business, the owners' interest is that which is left after deducting the total obligations from the total assets. The figure that remains is the net worth and it is, in a very real way, the owners' stake in the business. As defendants point out, when net worth is used up, the owners have lost their stake in the business and they continue in business only by gambling with the depositors' money, hoping that at some point the losses will reverse and their equity will be restored. But the depositors are of course insulated from loss by the FSLIC insurance fund. Thus, when book net worth sinks below zero, the real gambler is the FSLIC.

The variance between book net worth and fair market net worth illustrated by plaintiffs' chart loses much of its punch when we focus not on the extent of risk to the FSLIC's fund *upon liquidation*, but on the economic indicia that intervention is warranted. Here, the Bank Board, like the accounting profession traditionally, has chosen to rely exclusively on book net worth figures. Insofar as these figures bear a relationship to the owner's equity in the business, we cannot say that the Bank Board's test—as a test for determining *when to intervene*, rather than a test for determining the *cost of intervention*—is irrational. The Bank Board's test is based on the age-old adage that a person is more careful with his own money than he is with his neighbor's. While this thinking may not hold true in all cases, it is undeniably rooted in experience.

As an indicator of financial instability, we note that the negative book net worth test is far more favorable to the institution than the negative fair market value test. As plaintiffs' chart illustrates, most associations currently have a negative fair market value; only a very few have a negative book net worth. These latter associations are distinguished from other associations in that they have experienced larger operating losses.[14] While

[14] Telegraph, for example, had experienced in March of 1980 operating losses of $2.58 per $100.00 of assets which proved to

(Footnote continued on following page)

operating losses may not tell the Bank Board much about an association's ability to weather a short financial squall, the persistence of such losses over time is indisputably relevant to any evaluation of an association's long-term fitness. Insofar as the negative book value test reflects the trends of an association's operating losses, we cannot say that it bears no rational relation to the preservation of FSLIC assets.

Second, evidence was presented indicating that the financial community at large attaches significance to book net worth figures. We refer particularly to the deposition of Jay Janis, the former Chairman of the Bank Board.[15] Plaintiffs undoubtedly disagree with Mr.

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[15] *continued*
be $2.87 or 990 per cent behind the class of associations to which it belonged. For the 12 months ending in March of 1980, Telegraph was 447 per cent behind its class in operating results. Defendants' Exhibit 16.

[15] The deposition of Jay Janis contains the following colloquy:

A. . . . Insolvency to me is something in the market place will soon lead to inability to meet obligations.

Q. Can you explain to me what you mean by that?

A. Yes. When an association runs out of new worth or even when it is close to running out of net worth, it is in a difficult position. The association has to deal with a number of factors and elements in the outside world.

For instance, it has to deal with the investment banking community in Wall Street. That community is keyed in helping the institution to obtain large certificates of deposit, jumbo certificates as they are known in the industry, over $100,000.

The institution also has to deal with creditors. These creditors are concerned about the financial health of an institution.

An institution also has to deal with its depositors, those who place savings at an institution and rely on its financial condition for continuing to make such deposits.

An institution also raises funds through outside borrowings and those who are lenders, relying on institutions' financial condition. Likewise, an institution deals with a whole set of dealers in the business community and in the financial world who also look to their financial condition.

(Footnote continued on following page)

Janis' comments. It is critical, however, to bear in mind that we are analyzing this case for its substantive due process defects. As the Supreme Court has stated, "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson v. Lee Optical Co.*, 348 U.S. at 488; *Dandridge v. Williams*, 397 U.S. 471, 484 (1970). The sentiment expressed in *Lee Optical* is no less applicable to a challenge based on the Fifth Amendment Due Process Clause. In either case, a court's deference is based on the institutional inability of a court to choose between competing economic theories. If anything is clear from the last two decades in this country, it is that economic

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[15] *continued*

Now, the key issue for all of them is the issue of the insolvency of the association and net worth of the association is absolutely central to their determination about the financial condition of an institution.

So when an institution is reaching insolvency or in fact has reached it, it is my judgment that those sources of funds that they normally would look to and that I have previously mentioned are circumscribed by the financial condition, i.e., the lack of net worth.

Q. So that if an institution—I am trying to relate the discussion back now to the subject I raised before, the ability or inability of an institution to meet the obligations when it came due. So if an institution, in your view, is at or near zero net worth situation, then it also can be characterized as being very close to a situation where it would be unable to meet its obligations as they become due; is that accurate?

A. It will be unable to obtain further funds and an institution which cannot obtain funds is an institution that can't operate.

Q. But what if an institution had a zero or a negative net worth and was still able to obtain funds. Would you characterize that institution as insolvent?

A. Yes.

Deposition of Jay Janis at 69-70 (August 10, 1981).

theories are far from certain. In such circumstances, it is particularly appropriate that this court refrain from second-guessing the agency that has been recognized by Congress as possessing a certain amount of expertise in a complex field.

Finally, we hold that the book net worth test has some relationship to the preservation of public confidence. For tactical reasons that are obvious, plaintiffs have sought to focus the court's attention on only one purpose of the receivership statute, i.e., the protection of the integrity of FSLIC's insurance fund. They have based their constitutional challenge on the premise that this was the only purpose served by § 1729(c).[16] But at the time Congress enacted § 1729, it recognized that the integrity of FSLIC's funds and preservation of public confidence in savings and loan associations were intertwined:

> Federal insurance of savings accounts is fundamental to the financial stability of the entire savings and loan industry. The home building industry and millions of American home buyers depend upon savings and loan associations to help finance the construction and purchase of homes. The public has placed more than $120 billion of its savings in insured savings and loan associations. The ability of the savings and loan industry to help meet the Nation's housing needs would not have been possible without the public being confident that their savings were safe and secure. Much of the credit for maintaining this public confidence must be attributed to the savings account insurance pro-

[16] In our opinion of June 9, 1981, we identified the protection of FSLIC's insurance fund as the main purpose of § 1729(c). But, as the legislative history quoted *infra* indicates, the preservation of public confidence is inseparable from the integrity of the FSLIC's assets.

> vided by the Federal Savings and Loan Insurance Corp.

Senate Report No. 1263 at 2535-2536.

It is also evident from the legislative history of § 1464 (d)(6)(A), which is incorporated into § 1729(c), that federal receiverships were generated, at least in part, by the need to preserve the public's confidence in financial institutions. In the Senate Report to the 1954 amendment of § 1464, it was stated:

> The vital importance of sound and effective systems of banks and savings and loan associations to the continued economic growth of the country is clear. The banking system is a fundamental part of our monetary system and the Nation's $130 billion of demand deposits represents the principal element of the Nation's money supply. Banks and savings and loan associations are among the principal financial intermediaries of the Nation, holding about $300 billion in savings and channeling some $30 billion of new savings each year into homebuilding and other productive fields.

Senate Report No. 1482 (August 18, 1966) 89th Cong., 2d Sess. at 3536, *reprinted at* 1954 U.S. Code & Ad. News 3532, 3536. Inasmuch as the Senate Committee recognized the importance of the accumulation of deposits, it recognized the importance of maintaining the public's belief that its savings were secure. Section 1464 (d)(6)(A) and, therefore, § 1729(c) were intended, at least in part, to preserve the public's confidence.

The Bank Board's use of the book net worth approach to insolvency is rationally related to the preservation of the public's confidence. Mr. Janis' deposition testimony quoted above indicates that the public is likely to pay considerable attention to net worth figures in determining whether to deposit money in an association. It is also possible that the public would lose confidence in the watchdog agencies if it became known that the agencies

did not take seriously a substantial impairment of an association's net worth. Moreover, should the public lose confidence in a particular association, the big loser would be the FSLIC. As the flow of deposits stop, the association will have less money to work with and will become less credit worthy. The more the association's position deteriorates, the more likely it is that the FSLIC will be called upon to pay.

For these reasons, we find that § 1729(c) as applied by the Bank Board was neither arbitrary nor irrational. The most that may fairly be said about the Bank Board's conduct in this case is that it may have proceeded from an over-abundance of caution. Many persons, including those members of Congress who gave the Bank Board virtually a free hand in regulating the field, may believe that there can never be enough caution when other people's money is on the line. This appears to be what the legislators had in mind when they stated in 1966 that:

> The continued economic growth of this country is clearly dependent upon the existence of financially sound and capably managed private lending institutions . . . In such cases (in which institutions are improperly managed), it is essential that the Federal supervisory agencies have the statutory and administrative facility to move quickly and effectively to require adherence to the law and cessation and correction of unsafe or improper practices.

Senate Report No. 1482 at 3536.

In the absence of the Bank Board's use of arbitrary or irrational standards, this court will not interfere with the agency's exercise of its delegated authority.

We therefore find against plaintiffs in their action to remove the receiver appointed by the Bank Board and

enter judgment for defendants on Count III of the complaint.[16]

DATED: February 19, 1982

ENTER: /s/ JOHN F. GRADY
United States District Judge

[17] Count V of the Second Amended Complaint charges William J. Schilling, the Commissioner of Savings and Loan Associations for the State of Illinois with conspiracy to violate the federal statutes, 12 U.S.C. §§ 1464(d)(6)(A) and 1729(c)(2). Since we have found that neither of these statutes were violated in connection with the receivership of Telegraph, judgment in favor of William J. Schilling will be entered on Count V.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TELEGRAPH SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

v.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, et al.,

Defendants.

No. 80 C 2792

MEMORANDUM OPINION

Before the court is the motion of Telegraph Savings & Loan Association ("Telegraph" or "the Association") for modification and clarification of our Memorandum Opinion of June 9, 1981. Telegraph raises four issues. First, it argues that although we granted it a trial *de novo* on whether the criteria of 12 U.S.C. § 1729(c)(2) have been met, we have unduly limited the scope of that trial. Second, Telegraph contends that it must be allowed to litigate the merits of the Heron Proposal which the Federal Home Loan Bank Board ("FHLBB" or "the Board") rejected in preference to the purchase and assumption agreement it entered into with First Federal Savings & Loan Association. Third, the Association asserts that we erred in failing to examine its challenge to the sale of the Association's assets. Finally, Telegraph seeks modifica-

tion of our ruling that the legality of the state's custody proceedings does not affect the legality of the federal receivership.

I. Scope of the Trial De Novo

In our opinion of June 9, 1981, we pointed out that under 12 U.S.C. § 1729(c)(2), the FHLBB may appoint the Federal Savings & Loan Insurance Corporation ("FSLIC") receiver of a state savings and loan association only if three criteria are met. We stated our role in the trial *de novo* as follows:

> We are concerned in this proceeding not with the reasonableness or wisdom of the Board's conduct, but only with the question of whether the requirements of § 1729(c)(2) existed at the time Telegraph passed into receivership.

Mem. Op., 9.

In its motion to reconsider, Telegraph argues that this scope of review of the agency's action is too narrow. It argues, as it did in earlier briefs, that the trial should not be confined to a "bare bones analysis of whether the statutory grounds were present," but should go on to consider whether the Board's decision, even though authorized by statute, was a reasonable one.

Plaintiff has given us no convincing reasons why we should change our ruling. Telegraph argues that the decision to place it in receivership was made *ex parte*, without notice, without representation, and without an opportunity to present evidence and cross examine witnesses. In our opinion, we recognized the constitutional ramifications of the Board's *ex parte* proceeding and we accordingly ruled that Telegraph must be accorded a full opportunity to present evidence and cross examine witnesses on the issue of whether the Board's conduct met the statutory requirements. Neither the statute nor due process requires the court to go beyond this. The statute provides that the Board is entitled to appoint a receiver if "in the opinion of the Board, a ground for the appointment of a conservator or receiver as herein provided

exists . . . ." 12 U.S.C. § 1464(d)(6)(A). At the behest of the subject association, a district court is empowered to review the "merits" of the Board's decision. We read the word "merits" to refer to the issue of whether "a ground for the appointment of a conservator or receiver as herein provided exists." And we read the term "ground as herein provided" to refer only to the statutory grounds set forth in § 1464(d)(6)(A) and in § 1729(c)(2). We fail to see how the statute can be read any other way.

We also noted in our opinion that once the statutory grounds are shown to have been met, the court's labors come to an end. The wisdom of the Board's decision to exercise its power of receivership is an issue that Congress has vested in the Board and that is "not subject to re-examination in the federal courts under the guise of judicial review of agency action." *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 558 (1977). Telegraph takes issue with our reliance on *Vermont Yankee* since in that case the parties were given notice and a hearing before the agency. Nonetheless, we think the view expressed in the portions we have quoted from the *Vermont Yankee* case is apposite to the instant case. In *Vermont Yankee*, the Supreme Court cautioned against judicial intervention, absent statutory authorization, in policy matters which Congress had itself resolved or committed to an agency for resolution. *See* 435 U.S. at 519. The Court's remarks do not hinge on the amount of process an aggrieved party has received before an agency. Rather the remarks concern the allocation of responsibility for policy decisions between the judicial and legislative branches. Our authority extends to a determination of whether the agency's action was authorized by statute, determination of the reasonableness of the action is not our responsibility.

Telegraph also requests us to reconsider our decision to limit the hearing, at least initially, to the single issue of whether the Association was insolvent at the time it went into receivership. As we stated in our opinion, the Board cited two reasons under § 1464(d)(6)(A) for its action, namely, that the Association was insolvent and that it

was in an unsafe and unsound condition to transact business. Telegraph argues that it should be entitled "to contest . . . all of the bases and possible bases upon which the Board acted, as evidenced by the transcript of the Board's own proceedings." Pltf's. Mem., 6. In support of its position, the Association cites *Jordan v. American Eagle Fire Insurance*, 169 F.2d 181 (D.C. Cir. 1948). In that case, American Eagle sought to enjoin enforcement of an order of the Superintendent of Insurance which adjusted insurance rates. The Superintendent acted pursuant to a statute which provided that "[i]n determining the necessity for an adjustment of rates, the Superintendent shall give consideration to all factors reasonably attributable to the risks, to the conflagration or catastrophe hazard, both within and without the District and to a reasonable profit." 169 F.2d at 283. The statute further provided that any aggrieved person may "contest the validity of such order" of the Superintendent. In construing the phrase "contest the validity," the court held that the phrase meant "to test validity in any or every respect in which the order might be invalid." *Id.* at 289. From this case, plaintiff draws the conclusion that it is entitled to test all the possible bases for the Board's decision. However, *Jordan* does not compel such a result. The holding in that case must be read in light of the statute under which the agency acted. That statute instructed the Superintendent to give consideration to *all* factors relevant to the adjustment of insurance rates. Reliance by the Superintendent on one inapposite factor could affect the entire calculation. It is hardly surprising that under such a statute, an aggrieved party is entitled to explore all aspects of the Superintendent's order. Our statute is of a different nature. Section 1464(d)(6)(A) provides that "[t]he grounds for the appointment of a conservator or receiver for an association shall be *one or more* of the following . . . . If in the opinion of the Board, *a* ground for the appointment of a conservator or receiver as herein provided exists, the Board is authorized to appoint" such receiver. Since it is sufficient to continue a receivership if one ground for the appointment of a receiver is found to exist, unlike *Jordan*, we need not consider all of the bases upon which the agency acted.

This is not to say, however, that the Board may justify its action on the basis of *post hoc* rationalizations. "While we may not supply a reasoned basis for the agency's action that the agency itself has not given, . . . we will uphold a decision of less than ideal clarity if the agency's pay may reasonably be discerned." *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285-286 (1974). Telegraph continues to argue, however, that the Board did not act on the ground that the Association was insolvent but only on the ground that it was unsafe and unsound. On this motion, Telegraph adds that our finding that the Board acted on both grounds was not in keeping with the principles of summary adjudication. The Association argues that, viewed in light most favorable to the opponent of the summary judgment motion, i.e., Telegraph, the record reveals a genuine issue of fact as to whether the Board acted on the basis of Telegraph's insolvency. We disagree. Telegraph does not dispute the fact that the Board's notice accompanying its appointment of the FSLIC as receiver stated that ". . . the Association's losses have placed Telegraph in a condition of insolvency or immanent insolvency." Nor does the the Association dispute the fact that the transcript of the Board's closed meeting on May 22, 1980, at which the decision to appoint a receiver was made reveals that the Association's insolvency was the first matter discussed by the Board. Telegraph points out that discussion of the insolvency issue comprised less than five pages of a 30-page transcript, the balance of which records the discussion of what to do with the failing association. But we do not see how the amount of time the Board devoted to the insolvency issue controverts the fact, as revealed by the transcript, that the Board was concerned with the Association's net worth. At page 2 of the transcript, the Board discussed the Association's operating losses between July 1, 1979, and April 30, 1980, its losses projected through June 30, 1980, and its net worth as of April 30, 1980. On page 3, it examined Telegraph's monthly operating losses, the statement of Telegraph's comptroller that things would not improve and Telegraph's position with respect to the current cost of borrowing money. On page

4, the Board noted that its assessment of the Association's net worth position was in agreement with that of the Illinois Commissioner, that the Board's information was accurate and that the Illinois Commissioner intended to take custody of the institution on the grounds that it was insolvent. Starting with these undisputed facts, we have no trouble discerning the path the Board took in reaching its decision to place the institution in receivership. In view of the Board's rather thorough exploration of Telegraph's net worth and in view of the Board's statement of reasons for the receivership, the mere fact that the Board devoted a small portion of its meeting to the insolvency issue does not put in controversy the issue of whether the Board closed the Association on insolvency grounds.[1]

As we have stressed, under the statute the insolvency grounds is a sufficient ground in and of itself for the appointment of a receiver. Plaintiff has presented no facts which controvert the proposition that the Board relied on the insolvency ground in appointment of a re-

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[1] Plaintiffs also contend that this court may not grant summary judgment on any issue involving the Board's closed meeting of May 22, 1980, since defendants have withheld from discovery seven pages of the transcript of that meeting. Pursuant to an order of this court, the Board produced the seven pages for *in camera* review. The discussion recorded in the seven pages does not pertain to the Board's decision, or the grounds upon which the Board based its decision, to place Telegraph in receivership. Rather, the seven pages deal exclusively with one factor affecting the viability of a proposal for the disposition of Telegraph's assets *after* the receivership was to become effective. The one factor was the status of certain moneys contributed by Telegraph by a "preferred shareholder." The Board wrestled with the question whether the contribution was debt or equity. Insofar as the discussion was joined by the Board and its counsel and treated the Board's defense to a potential lawsuit, we agree that it is protected by the attorney-client privilege. It does not compromise that privilege, however, to state that the Board concluded that the $1 million should be considered a contribution to Telegraph's capital. The record also states that the Board included the $1 million in its calculations of the Association's net worth.

ceiver. That the Board may have simultaneously relied on other grounds, e.g., that the Association was unsafe and unsound, even in view of the Heron proposal, does not detract from our decision that the Board's action may be tested and validated on the insolvency ground alone. The reasoning for doing so, of course, is that protracted litigation on the more complicated "unsafe and unsound" issue will be unnecessary in the event defendants prevail on the insolvency issue.

II. The Heron Proposal

Telegraph also seeks modification of our ruling that the Heron proposal would not be considered at trial. We stated that we would initially confine the trial to the issue of whether the Board could reasonably have found that Telegraph was insolvent at the time it passed into receivership. We also stated that if we found that the Board's action could not be justified on the insolvency ground, we would then consider in later proceedings whether it could be justified on the unsafe and unsound ground. The Heron Proposal submitted by the Association called for the purchase of a large percentage of Telegraph's stock by an outside buyer. While it is conceivable that the proposal has some bearing on the issue of whether Telegraph was in an unsafe and unsound condition to transact business, as a *prospective* measure intended to boost the Association's net worth, the proposal is irrelevant to the issue of whether the Association was insolvent at the time it passed into receivership. For this reason, we defer consideration of the Heron proposal pending the outcome of the trial on the insolvency issue.

III. Sale of the Assets

Telegraph also objects that our opinion did not discuss the constitutionality of the sale of the Association's assets. If we find that the appointment of the receiver was improper, we will not need to reach the question of whether the subsequent sale of the assets was executed in accordance with the Board's regulations: If the receivership was

improper, the sale was *ipso facto* improper.[2] If we find for the agency on the receivership issue, we will then consider whether the sale of the assets was carried out in a constitutional manner.

IV. Custody Under State Law

Finally, Telegraph seeks modification and clarification of our ruling that violations of state law in connection with the state's takeover of the Association were irrelevant to the legality of the federal receivership. In the main, we based our ruling on the legislative history which revealed that the provisions for federal receiverships were enacted to protect the interests of the FSLIC. We noted that the FSLIC's interests are put at risk whenever a state takes custody of an association and that its interests are equally threatened when the state takes custody in violation of, rather than in accordance with, state law.

Telegraph insists, however, that the legality of the receivership must be tested under state law since federal officials were involved—through the preparation of documents and the rendering of counsel—in the state's allegedly unlawful custody action. As we pointed out in our opinion, the legislative history of the receivership provisions of the Bank Protective Act makes it exceedingly clear that the legality of federal receiverships is not to be tested under state law. Mem. Op., 13. The pertinent portion of the Senate Report states:

> If the Board elects to appoint the FSLIC under Federal law rather than accept the State appointment, any subsequent legal challenge to the FSLIC as receiver would come under section 5(d)(6)(A) of the Home Owners' Loan Act which provides for judicial review.

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[2] We do not at this point address the question of what remedy would be feasible in that event.

> The effect of the legislation would be to enable the FSLIC to defend its appointment under Federal law *instead of requiring it to defend the legality of the State savings and loan administrator's determinations under State law.*

S. Rep. No. 1263, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. Code & Ad. News 2530, 2540. Congress thus recognized that the effective execution and administration of a federal receivership depends in large part on its being tested under uniform federal law. Where the legality of the appointment turns on the law of each state, the variables affecting the legality of the appointment increase and the decisiveness of the receiver's action may be compromised. Furthermore, insofar as the multiplicity of state laws provide an obstacle to the federal receivership, the ability of the FSLIC to protect its assets may be adversely affected.

Adoption of Telegraph's argument would require us to do just what the legislative history precludes. That is, it opens every federal receivership to attack on the grounds that federal officials violated some aspect of state law. Thus, every suit brought under 12 U.S.C. § 1464(d)(6)(A) could only be resolved after it is first determined whether the state custody proceeding violated a state statute and whether the federal officials participated in the violation. Under such a scheme, the strong interest of the federal agencies in defending federal receiverships under uniform federal law would be seriously compromised. We do not believe Congress intended such a result.

Additionally, Telegraph may be asserting that the complicity of federal officials in the allegedly wrongful state action was so extensive that the takeover was not accomplished "by or under" the state law, but rather was the result of federal coercion. In support of this theory, plaintiffs have offered to prove that a series of meetings took place wherein the federal officials, and their attorneys, counseled and instructed the state on all aspects of the events of May 22, 1980, including the state's taking of custody." Pltf's Mem., 11. However, even assuming such proof, we still would not find that the role played by the

federal officials was so excessive as to supplant the state action. As this court stated at an earlier hearing,

> Now, secondly, I don't know that there is anything wrong with these people having gotten together and planned how this thing was going to work. In fact, it seems to me that it would be unwise not to get together and coordinate their efforts.
>
> It doesn't seem to me that the State Commissioner should take custody without knowing what is going to happen after that; and it is perfectly natural that he would confer with whoever it was who was going to appoint the receiver; and it also seems perfectly natural to me that they would confer with someone with a view toward that third party assuming the operations of the bank, under the statutory procedure which contemplates that being done in certain circumstances.

Tr. Hrg. 3/20/80 (J. Grady). For this reason, excessive federal involvement of the sort plaintiff has offered to prove does not alter our conclusion that Telegraph was closed by or under the laws of Illinois.

This does not mean, however, that state savings and loan associations have no remedies against either state or federal officials for acts in violation of state law. Ill. Rev. Stats. ch. 32, § 852, provides for an action to enjoin custody unlawfully acquired and may provide the basis for a damage action.[3] Further, where federal officials act in complicity with state defendants to deprive a person of constitutional rights, the federal defendants may be liable in damages under 42 U.S.C. § 1983. *Hampton v. Hanrahan*, 600 F.2d 600, 623 (7th Cir. 1979). Finally, while we express no definite opinion, we note that plaintiff may be able to obtain relief against the federal agencies, the sovereign immunity doctrine notwithstanding, where a constitutional violation or *ultra vires* act is al-

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[3] See comments of Judge Higgins in Plaintiff's Memorandum Regarding Prior Rulings, Tr. Proc. 6/30/80 at 11-12.

leged and where the remedy would not impose an "intolerable burden on government functions, outweighing any consideration of private harm." *Schlafly v. Volpe*, 495 F.2d 273, 280 (7th Cir. 1974).

While such causes of action against the federal and state defendants may provide plaintiff with monetary relief, we made it clear in our earlier opinion that they may not be used as vehicles to attack the federal receivership. Mem. Op., 5. The receivership may be tested exclusively under 12 U.S.C. §§ 1464(d)(6)(A) and 1729(c)(2) and it is plaintiff's cause of action under these statutes with which we are concerned.

If plaintiff's attack on the receivership proves unsuccessful, we shall then have to determine whether any other federal claims remain. If no such claims remain, we will then consider whether we should entertain the purely state law claims raised by the complaint or whether we should defer to the state tribunal in which the state law claims were simultaneously filed. We recognize that Telegraph's action has been dismissed from state court on the grounds that this court had taken jurisdiction over the federal and state claims. Plaintiffs have appealed the dismissal to the state appellate court, which is holding a decision in abeyance pending the outcome of our case. Should we decide that the state court is the proper forum for the resolution of the state court claims, we would dismiss the state law claims without prejudice.

The motion to modify the Memorandum Opinion of June 9, 1981, is denied.

DATED: August 5, 1981

ENTER: /s/ JOHN F. GRADY
United States District Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 80 C 2792

TELEGRAPH SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

v.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, et al.,

Defendants.

MEMORANDUM OPINION

Plaintiff brings this action to remove the Federal Savings & Loan Insurance Corporation ("FSLIC") as receiver of its assets and to obtain equitable relief for harm suffered as a result of the sale of those assets. Before the court is the motion for summary judgment of defendants Federal Home Loan Bank Board ("FHLBB") and FSLIC on Count III. The motion is granted in part and denied in part.

I. FACTS

The uncontroverted facts are as follows. Telegraph Savings and Loan Association ("Telegraph" or "the Association") was a state chartered, federally insured savings and loan association. Several years prior to 1980, Telegraph began experiencing financial difficulties as a result of an adverse "spread" between the yield

on its portfolio mortgages and the rising cost of money. Strasser Affid., ¶3. As a federally insured association, Telegraph was required by law to maintain reserve and net worth requirements as set forth in 12 C.F.R. § 563.13. In 1977 and again in 1978, it met these requirements only by earmarking paid-in surplus from the issuance of preferred stock. Roy Affid., ¶2. As of June 30, 1979, Telegraph failed to meet its minimum reserve requirement by $303,480.00 and had fallen short of its net worth requirement by $704,513.00. *Id.* For the six months ending June 30, 1979, the Association suffered losses in excess of $650,000.00 and logged a total loss for 1979 of $237,469.00. *Id.*, ¶3. As of June 30, 1979, Telegraph's net worth was set at $4,806,938.00. *Id.*; Conover Affid., Ex. 3 (8-26-80). Over the following ten months, Telegraph's net worth steadily declined to an April 30, 1980, level of $449,389.[1] Roy Affid., ¶¶3, 4; Conover Affid., Exhs. 2-13. In the month of April 1980 alone, the Association lost over $730,000.00. Conover Affid., Ex. 13. Telegraph's daily operational losses accelerated from $15,500.00 per day in February to $18,700.00 in March to $24,500.00 in April.

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[1] Telegraph's monthly losses and declining net worth from July 1979 through April 1980 were as follows:

Date	Income or Loss for Month	Net Worth
7/01/79		4,806,938
7/31/79	(435,915)	4,371,023
8/31/79	(366,695)	4,004,328
9/30/79	(291,348)	3,712,980
10/31/79	(315,479)	3,397,501
11/30/79	(345,726)	3,051,775
12/31/79	(255,843)	2,780,283
1/31/80	(561,442)	2,218,841
2/29/80	(455,074)	1,763,767
3/31/80	(579,454)	1,184,313
4/30/80	(734,924)	449,389

Conover Affid., ¶1-13 (8-26-80).

As a result of its financial difficulties, late in 1979 Telegraph became the subject of careful scrutiny by the Illinois Commissioner of Savings and Loan Associations ("the Commissioner"), the FHLBB and the FSLIC. As a result, a special meeting of Telegraph's Board of Directors was called on December 20, 1979, and was attended by the Deputy Commissioner of Savings and Loan Associations. At this meeting, Telegraph's president, William Strasser, reviewed the position of the Association and concluded that it "clearly was undercapitalized." Strasser also stated that various plans for the infusion of new capital were under consideration, including the sale of $3 million of preferred stock to a publicly held corporation. Nelson Affid., Ex. 2. The Deputy Commissioner responded that if Telegraph's financial condition did not improve by March 31, 1980, the Commissioner would have to consider taking custody of the Association. *Id.*

Another special meeting of the Board was held on March 5, 1980, and was attended by the Commissioner who presented a number of resolutions intended to prevent the Association's financial demise. The minutes report that merger possibilities were discussed in detail. Nelson Affid., Ex. 3. The Commissioner stated that if no buyers appeared by March 31, 1980, he would be compelled to proceed with custody.

In the meantime, Telegraph's position had continued to deteriorate. On May 19, 1980, Telegraph's comptroller prepared reports projecting losses of over $590,000.00 for the period of May 1 to May 19 and losses of nearly $1 million for the entire month. Conover Affid., ¶3 (8-26-80). These losses, were they actually to occur, would have given Telegraph a substantial negative net worth by mid-May. It appeared that Telegraph would in fact suffer these losses when, on May 21, 1980, Virgil Seeley, Telegraph's executive vice-president and treasurer, informed the Commissioner that, "Nothing has come to my attention that would indicate operating

results materially more favorable for May, 1980 than those experienced in April, 1980." Seeley Affid., ¶3 (8-26-80).

In early May, Strasser finally came up with a buyer for the Association. Strasser obtained a written commitment from The Heron Corporation to purchase 80 per cent of Telegraph's preferred stock for $7 million. The deal was conditioned, however, on FSLIC's promise to provide Telegraph with a 15-year, $15 million interest-free loan, to be extended for an additional five years at six per cent interest. This proposal was evaluated by the FHLBB at a closed meeting on May 22 and rejected for two reasons: First, it was thought to provide insufficient capital to turn the Association around and second, it appeared that a sale of the assets would prove more costly to the FSLIC than other alternatives under consideration.[2] Compilation of Materials Filed by FHLBB in Support of Motion for Summary Judgment, "Certified Transcript," pp. 6, 16, 22-26. At this meeting, it was also decided that when the State Commissioner took custody of Telegraph, the FHLBB would, pursuant to its statutory authority,[3] appoint FSLIC receiver and immediately transfer the assets and liabilities to First Federal Savings & Loan Association under a purchase and assumption agreement. *Id.*

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[2] Joseph Arendes, a FHLBB staff member, submitted a written recommendation to the Board urging that the Heron proposal be accepted. Arendes has since stated that the memo was "anticipatory . . . [and] solely my conjecture which neither then nor later had any basis in fact." Arendes Affid., ¶ 4. Plaintiff has offered expert testimony to the effect that the proposal was sound and would have turned Telegraph into a profitable operation. Shapiro Affid., (4-9-81). The Board found, however, that the cost to the FSLIC to the Heron proposal was $3 million greater than the cost of transfering the business to another savings and loan institution under a purchase and assumption agreement. Compilation of Materials Filed by FHLBB in Support of Motion for Summary Judgment, "Certified Transcript" at 6.

[3] Title 12 U.S.C. § 1729(c)(2).

Later in the day, without giving prior notice, the Commissioner took custody of Telegraph.[4] The Commissioner's custody notice stated that Telegraph's withdrawal capital and permanent capital reserve were impaired; that it was unable to continue operations; and that its financial condition constituted an emergency, thereby excusing the Commissioner from giving Telegraph prior notice and an opportunity for corrective action.[5] Complaint, Ex. A. Moments later, the FHLBB's order appointing FSLIC receiver went into effect. The order stated the following grounds for the receivership:

> Telegraph is in an unsafe and unsound condition to transact business in that the association's losses have placed Telegraph in a condition of insolvency or imminent insolvency;

Complaint, Ex. B. The final act of the drama took place later that evening, when the FSLIC, as receiver, executed the purchase and assumption agreement with First Federal Savings & Loan Association. By the end of May 22, 1980, Telegraph had ceased to exist.

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[4] The Commissioner took custody of Telegraph pursuant to Ill. Rev. Stats. ch. 32, § 848 which provides that

> The Commissioner in his discretion may take custody . . . if it appears from reports made to the Commissioner, or from examination made by or on behalf of the Commissioner: . . . (b) That the withdrawable capital of the association is impaired to the extent that the realizable value of its assets is insufficient to pay in full its creditors and holders of its withdrawable capital; or that its permanent reserve capital is impaired; or (c) That the association is unable to continue operation; . . . ."

[5] Ill. Rev. Stats. ch. 32, § 848, provides that "[u]nless the Commissioner finds that an emergency exists which may result in loss to members or creditors and requires that he take custody immediately, he first shall give written notice to the directors, trustees, or liquidators specifying the conditions criticized and state a reasonable time within which correction may be made."

II. DISCUSSION

On June 3, 1980, the Association filed a ten-count complaint against a number of parties, including the Illinois Commissioner, the FHLBB and the FSLIC. Count III, attacking the legality of the receivership, is the keystone of the complaint, as a brief survey of the federal statutory framework demonstrates.

Title 12 U.S.C. § 1464(d) and § 1729 contain the provisions governing the appointment of federal receivers for state savings and loan associations and challenges to such appointments. With respect to challenges to a receivership, § 1464(d)(6)(A) provides that

> In the event of such appointment [of a receiver], the association may, within thirty days thereafter bring an action in the United States district court for the judicial district in which the home office of such association is located . . . for an order requiring the Board to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Board to remove such conservator or receiver.

Suit under § 1464(d)(6)(A) is the only means of attacking the legality of the conduct of a receivership, as § 1464(d)(6)(C) makes clear:

> Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver, or, except at the instance of the Board, restrain or affect the exercise of power or functions of a conservator or receiver.

Plaintiffs argue that if the court finds that the receiver was unlawfully appointed, a full panoply of equitable relief should be available to set aside the sale of assets.[6] Nonetheless, the parties do agree that if plaintiff does

[6] Plaintiff seeks this equitable relief in Counts IV, VI, VII, IX and X.

not prevail under § 1464(d)(6)(A), all other causes of action challenging the appointment and conduct of the receiver must be dismissed.

We turn then to the law governing the appointment of receivers under Title 12. Section 1729(c)(2) provides the FHLBB with "exclusive power and jurisdiction" to appoint the FSLIC receiver for the assets of an insured state savings and loan association in the event the Board determines:

> (A) that . . . (ii) an insured institution (other than a Federal savings and loan association) has been closed by or under the laws of any State;
>
> (B) that one or more of the grounds specified in paragraph (6)(A) of section 1464(d) of this title, existed with respect to such institution at the time a conservator, receiver, or other legal custodian was appointed, or at the time such institution was closed . . . ; and
>
> (C) that one or more of the holders of withdrawable accounts in such institutions is unable to obtain a withdrawal of his account, in whole or in part;

Section 1464(d)(6)(A), referred to in subsection (B) of the foregoing statute, provides that

> The grounds for the appointment of a conservator or receiver for an association shall be one or more of the following:
>
> > (i) insolvency in that the assets of the association are less than its obligations to its creditors and others, including its members;
> >
> > * * * * *
> >
> > (iii) an unsafe or unsound condition to transact business;
> >
> > * * * * *
>
> The Board shall have exclusive power and jurisdiction to appoint a conservator or receiver. If, in

> the opinion of the Board, a ground for the appointment of a conservator or receiver as herein provided exists, the Board is authorized to appoint ex parte and without notice a conservator or receiver of the association.

The legality of the receivership turns on whether these three requirements set forth in § 1729 existed at the time of the appointment.

Before we apply this law to the facts of the case, however, it is necessary to establish the proper role of this court in reviewing the appointment of federal receivers for savings and loan institutions. As discussed above, § 1464(d)(6)(A) allows an association to challenge a receivership within 30 days after the appointment. The statute instructs that "the court shall upon the merits dismiss such action or direct the Board to remove such conservator or receiver."

The parties differ as to the court's role in this rather arcane proceeding prescribed by the statute. Defendants argue that the statute authorizes a limited review in which "the court must defer to the regulators on matters of policy and judgment. . . . determining [only] whether the basic prerequisites for administrative action have been satisfied." Def.'s Memo. In Support of Summary Judgment, 14. Plaintiff contends that the language "on the merits" requires the court to conduct a *post facto* adversarial hearing in which the "reasonableness" of the government's action is independently evaluated. Summary of Pl.'s Response to Def.'s Summary Judgment Motion, 3.

We agree with plaintiff that it is entitled to a full adversarial hearing "on the merits" of the case. This conclusion is compelled by the structure of the statute, by the legislative history and by the strictures of due process. We begin with the statute itself. Section 1464 (d)(6)(A) entitles the FHLBB to seize control, *ex parte*, of a savings and loan association if, in its opinion, seizure is warranted. The Board is required neither to

make findings nor to give reasons for its action. Rather, the first hearing accorded an association is in the district court and it is at this hearing that Congress apparently intended that such findings and reasons would emerge. That the hearing is to be "on the merits" suggests that the plaintiff is entitled to a more expansive review than that mandated by statutes requiring hearings "on the record." 5 U.S.C. § 706(2)(E) (review "on the record" authorizes court only to determine whether the decision is "unsupported by substantial evidence."); *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 414 (1970). In defining our proceeding as one "on the merits," rather than one "on the record," the statute seems to require not an appellate-type proceeding but rather an exercise of this court's *de novo* jurisdiction. *See Stoner v. Presbyterian University Hospital*, 609 F.2d 109, 112 (3rd Cir. 1979). Finally, that the agency action is to be tested in an expedited hearing evidences Congressional recognition of the significance of the due process interests involved in an ex parte seizure of property. In view of the significance of these interests, it would be anomolous to conclude that Congress intended to confine the court to a limited review of the seizure.

The legislative history of § 1464(d)(6)(A) reinforces this conclusion. Prior to 1966, the FHLBB could not appoint a receiver without first conducting a hearing at which the subject association had the opportunity to introduce evidence and cross examine.[7] In 1966, Congress gave the Board the power to appoint a receiver *ex parte* and without notice. In so doing, however, Congress substituted for the prior hearing an expedited hearing to be held in federal district court after the receiver had taken custody. Defendants have introduced no evidence from the legislative history—nor have we found any—which indicates that Congress intended to deprive an association of the right to contest the receivership in at least one full adversary hearing.

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[7] The legislative history appears in S.Rep. No. 1263, 90th Cong., 2d Sess. *reprinted in* 1968 U.S. Code & Ad. News 2530.

Moreover, providing an association with anything less than an adversarial hearing in the wake of an *ex parte* seizure offends the principles of due process. "Temporary governmental action against a particular party may often be taken without prior hearing if opportunity for full hearing is provided within a reasonable time." 2 Davis, *Administrative Law Treatise* 388 (2d ed. 1979); *see, e.g., Matthews v. Eldridge*, 424 U.S. 319 (1976); *North American Cold Storage Co. v. City of Chicago*, 211 U.S. 306 (1908); *Lawton v. Steele*, 152 U.S. 133 (1894). "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1969). The question presented to the court in the instant case raises important due process interests which can be resolved only through a detailed exploration of factual matters, viz., whether Telegraph was insolvent or in an unsafe and unsound condition at the time it was committed to a receiver.

While we therefore find that plaintiff is entitled to a *de novo* hearing "on the merits,"[8] we also agree with defendants that the "merits" are limited to the issue of whether the Board had statutory authority to appoint the FSLIC receiver. We are concerned in this proceeding not with the reasonableness or wisdom of the Board's conduct, but only with the question of whether the require-

[8] We wish to emphasize that our finding that a *de novo* hearing is required is based not on any provision of the Administrative Procedure Act, 5 U.S.C. §706, but on the provisions of 12 U.S.C. § 1464(d)(6)(A). The Supreme Court has stated that the APA authorizes *de novo* review only ". . . when the action is adjudicatory in nature and the agency factfinding procedures are inadequate. And there may be independent judicial factfinding when issues that were not before the agency are raised in a proceeding to enforce nonadjudicatory agency action." Citizens To Preserve Overton Park v. Volpe, 401 U.S. 415 (1970). Since we rely on § 1464(d)(6)(A) for the requirement of *de novo* review, we need not determine whether such review would also be allowed under 5 U.S.C. § 706.

ments of § 1729(c)(2) existed at the time Telegraph passed into receivership. Whether the Board should be able to take such action once those requirements have been met is one of those "fundamental policy questions appropriately resolved by Congress . . . [which] are not subject to re-examination in the federal courts under the guise of judicial review of agency action." *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 558 (1977); *see also Radio Corporation of America v. U.S.*, 341 U.S. 412, 415 (1951) ("courts should not overrule an administrative decision merely because they disagree with its wisdom.")

Two procedural questions remain before we reach the merits. The statute is silent as to which party shall bear the burden of proof in a suit challenging the agency's *ex parte* seizure and by what quantum of evidence that proof shall be established. On this point, plaintiff argues that the FHLBB has the burden of showing that its decision was reasonable in light of the facts. Summary of Pltf.'s Response to Def.'s Summary Judgment Motion, 10-11. We disagree. The general rule regarding burden of proof in actions challenging agency action is that the burden of proving error is on the party contesting the validity of the action. *Pacific States Co. v. White*, 296 U.S. 176 (1935). Where the agency action pursuant to a notice and hearing procedure, the presumption of validity is especially warranted. *Id.* at 216. Nonetheless, even where the agency acted *ex parte*, its decision is still entitled to a presumption of correctness, albeit a lesser one. *New Hampshire Fire Insurance Co. v. Murray*, 105 F.2d 212, 217-218 (7th Cir. 1939). The presumption accorded *ex parte* action is one of "prima facie correctness"); *but see U.S. v. Maxwell*, 278 F.2d 206 (8th Cir. 1960). This view is confirmed by the more recent case of *Citizens to Preserve Overton Park v. Volpe*, *supra*. In that case, the government agency acted without a hearing and without stating findings; the Court held that while the agency's action was subject to a "probing in depth review," nevertheless, "the Secretary's decision is entitled to a presumption of regularity." 401 U.S. at 415-416.

The burden is thus on the challenger, Telegraph, to overcome that presumption.[9] But because the presumption is only slightly in favor of the FHLBB, plaintiff need not go so far as to show the agency's decision was arbitrary or capricious; plaintiff need only show that the decision was incorrect by the greater weight of the evidence. This conclusion is supported by the provisions in the Administrative Procedure Act, 5 U.S.C. § 706(2)(F) relating to *de novo* trials. Section 706(2)(F) provides that a reviewing court shall

> (2) hold unlawful and set aside agency action findings, and conclusions found to be—
>
> * * * * *
>
> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

Although our proceedings in this case are not governed by the provisions of 5 U.S.C. § 706(2)(F), but by 12 U.S.C. § 1464(d)(6)(A), *see Forester v. Consumer Products Safety Commission*, 559 F.2d 774 n. 22 (D.C. Cir. 1977), the comparison is instructive. In other contexts in which a trial *de novo* is considered appropriate, the Congressional preference is for a decision based on whether the agency action is supported by the facts.

Lastly, we note that the statute as it existed prior to 1966 provided that the Board's determination that a receivership was justified should be "subject to review . . . by the court . . . upon the weight of the evidence."[10] It

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[9] A different result would obtain if this action were brought by the agency to enforce its own ruling. In such a case, the agency acts in the role of prosecutor and is given the prosecutor's burden. U.S. v. International Harvester Co., 387 F. Supp. 1338 (D.C.D.C. 1974). Section 1464(d) provides a different scheme. Under the statute, agency action is not tested through an enforcement proceeding but through suit instituted by the association.

[10] *See* former 12 U.S.C. § 1464(d)(2); *see, e.g.*, Beacon Federal Savings & Loan Association v. FHLBB, 162 F. Supp. 350 (E.D. Wis. 1958).

does not appear to us that in revising this statute, Congress intended to impose a heavier burden of proof on an association than existed under the old statute.

We now turn to the merits and consider whether, on the weight of the evidence, the three prerequisites for the appointment of a receiver existed.

It must first be determined whether "an insured institution . . . has been closed by or under the laws of any state." Plaintiff argues that this condition was not met here since although Telegraph was closed by state officials, it was not closed in compliance with state law. According to Illinois law, unless an emergency exists, the state must give notice to the savings and loan association prior to taking custody of its business. Ill. Rev. Stat. ch. 32, § 848. In closing Telegraph, the Commissioner claimed that an emergency existed and gave no notice. Plaintiff disputes the existence of an emergency and contends that since notice was not given, the institution was not closed "by or under the laws of" Illinois.

The legislative history of § 1729 leads us to a different conclusion.[11] Prior to the Bank Protection Act of 1968, which enacted § 1729(c)(2), when a state took custody of a federally insured state savings and loan association, the state was free to appoint its own receiver or to delegate the task to the FSLIC. Although the FSLIC usually absorbed upwards of 95 per cent of a failing association's liabilities, it was seldom appointed receiver. Between 1941 and 1968, only five associations in the nation went into receivership. The FSLIC, while primarily liable on the claims against these institutions, was given control over none of the assets. In one case involving the failure of Marshall Savings & Loan Association, the state receiver accepted FSLIC insurance money but refused to provide the corporation with any financial records. When the records were provided several years later, it became apparent that Marshall's assets had been allowed to de-

[11] See note 7.

teriorate. The Senate Report on the Bank Protection Act described the problem:

> Thus, under the information blackout, the Marshall receivership tied up $83 million of the FSLIC's capital for 3 years at an interest cost of $12 million; it increased the insolvency of the association by more than $4 million; and it failed to pay back a single penny to the FSLIC for its insurance payments or for interest on its capital. Unfortunately, under existing law, except for its claim for interest in the use of funds, the Home Loan Bank Board and the FSLIC were completely powerless to deal with the situation. Unlike Federal associations, the Home Loan Bank Board could not appoint the FSLIC as receiver to safeguard the association's assets and to effect an orderly liquidation.

S. Rep. No. 1263, 90th Cong., 2d Sess. *reprinted in* 1968 U.S. Code Cong. & Ad. News 2530, 2537. Legislation allowing the FHLBB to appoint the FSLIC as receiver whenever a state takes custody of an insured institution was finally introduced when two other Illinois receiverships threatened to repeat the Marshall situation. *Id.* at 2537.

Section 1729(c)(2) was thus intended to protect the funds of the FSLIC from dissipation in the hands of a state receiver. In view of this purpose, the legality of the receivership under state law is hardly relevant to FSLIC's authority to take charge of the assets of a defunct association. Whenever a state savings and loan association is closed, FSLIC's funds are put at risk. The FSLIC would be in no better position if its funds were depleted by a receiver who took possession in accordance with, rather than in violation of, state law.

The legislative history reveals another reason why plaintiffs' argument cannot be accepted. The Senate Report notes that "the effect of the legislation would be to enable the FSLIC to defend its appointment under Federal law instead of requiring it to defend the legality of the State savings and loan administrator's determi-

nations under state law." *Id.* at 2540. To require the FHLBB to show that Telegraph was taken into custody in compliance with Illinois law would undermine the Congressional intent to have the federal agencies' conduct evaluated under uniform federal law.

We therefore conclude that the first requirement of § 1729(c) is met whenever an institution is closed by state officials.[12] Since it is undisputed that Telegraph was closed by state officials on May 22, 1980, the first requirement of § 1729(c)(2) was satisfied.

The second requirement is that one or more grounds specified in § 1464(d)(6)(A) exist at the time the association passes into receivership. Defendants argue that at the time the FSLIC took over, Telegraph was both insolvent and in an unsafe and unsound condition to transact business.[13] We turn first to evidence of Telegraph's

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[12] We think the intent of the language "by or under the laws of any state" is similar to that of the phrase "under color of" state law which appears in 42 U.S.C. § 1983. The Supreme Court has interpreted the latter phrase to include not only action performed in conformity with state law but also action "made possible only because the wrongdoer is clothed with the authority of state law." Monroe v. Pape, 365 U.S. 167, 184 (1960).

[13] The Board cited the following reasons for its appointment of FSLIC as receiver:

> Telegraph is in an unsafe and unsound condition to transact business in that the association's losses have placed Telegraph in a condition of insolvency or immanent insolvency.

Complaint, Ex. B. Plaintiff contends that in view of this statement, the Board moved against Telegraph only under the "unsafe and unsound" provision of § 1464(d)(6)(A). Since an agency's action can only be upheld on the basis that was articulated by the agency itself, and not on the basis of post-hoc rationalizations, S.E.C. v. Chenery Corporation, 332 U.S. 194 (1947), plaintiff objects to the Board's attempt to justify its conduct under both the "unsafe and unsound" provision and the "insolvency" provision of § 1464. We think, however, that the Board's statement expressed its intent to proceed against Telegraph under both provisions of the statute. Moreover, the

(Footnote continued on following page)

insolvency as of May 22, 1980. It is undisputed that from July 1, 1979, to April 30, 1980, Telegraph's net worth steadily declined from nearly $5 million to $450,000.00 and that the operational losses for April alone exceeded $734,000.00. On May 19, Telegraph's comptroller made the following projection:

> Based upon my review of the books and records of Telegraph as of May 19, 1980 and taking into consideration my knowledge of the financial circumstances of Telegraph, I estimated that for the period of May 1 through 19, 1980, Telegraph had lost $591,778.29 and I projected that for the entire month of May, Telegraph would lose $983,147.86.

Conover Affid., ¶3 (8-26-80). On the basis of the comptroller's projections, Telegraph had a negative net worth of approximately $142,000.00 on May 19 and of approximately $240,000.00 on May 22. Based on April's losses, Telegraph's treasurer also estimated that the Association had a negative net worth of $89,000.00 as of May 22, 1980. Seeley Affid. ¶5 (8-26-80).

Plaintiff challenges these figures as speculative. Telegraph points out that it kept its books on an accrual basis and that under this system, its net worth could not have been calculated until the end of the month and would not have been available until the Association filed its report with the FHLBB on June 10, 1980. Plaintiff's expert Dr. Sherman Shapiro concludes that "any intra-monthly calculation or quantification of Telegraph's net worth

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[13] *continued*

rule prohibiting *post hoc* rationalizations is intended to "avoid propel[ling] the court into the domain which Congress has set aside exclusively for the administrative agency." *Id.* at 196. In the instant case, evaluation of the Board's decision under the "insolvency" provision of § 1464(d)(6)(A) will not constitute an invasion of the FHLBB's turf. In justifying the receivership, the agency expressly stated that insolvency was Telegraph's central problem. That the wording of the Board's statement did not systematically reflect the categories set forth in the statute does not obscure the substance of the Board's findings.

such as was attempted on May 22, 1980, would be extremely tentative and subject to wide variances." Shapiro Affid., ¶33 (4-10-81). Shapiro even questions the accuracy of the net worth figures appearing in the monthly reports. He states that, "The first truly accurate calculation of Telegraph's net worth would not have been available until the annual audit as of June 30, 1980, in view of the necessary adjustments, frequently substantial, that are customarily made in connection with such audits." *Id.* at ¶34.

While we understand Dr. Shapiro's concern for obtaining the most accurate assessment of Telegraph's position, we do not believe that Congress intended that the FHLBB await the issuance of a failing association's annual audit (which may be months away) or even the issuance of its monthly statement (which may be weeks away) before appointing a receiver under § 1464(d)(6)(A)(i). The insolvency requirement must be read in light of the purpose of the Bank Protection Act of 1968 to safeguard the financial integrity of the FSLIC. That purpose would be seriously undermined if § 1464(d)(6)(A)(i) were read to require the FHLBB to wait weeks or months—while the association's liabilities, and, thereby, the FSLIC's obligations, increase—before exercising its statutory authority to take custody of a business which is projected to have a substantial and growing negative net worth.

In our view, plaintiff's argument goes too far. Its position is that projections of net worth are *per se* an unreasonable basis for the Board's exercise of its power. As the foregoing discussion indicates, we think the Board is entitled to rely on projections of net worth, provided they are reasonable. There is a strong argument that the net worth estimates upon which the Board relied here were reasonable. The projections were entirely in keeping with the Association's performance for the month of April and for the prior ten months. Moreover, according to Telegraph's treasurer, there were no indications that May would show improved performance. Seeley Affid., ¶4 (8-26-80). Additionally, the projections were made by apparently reliable sources of information con-

cerning Telegraph's financial status, namely its treasurer and its comptroller. Plaintiff contends that notwithstanding these indices of reliability, "there was no reasonable basis upon which a finding of insolvency or imminent insolvency could have been made." Shapiro Affid., ¶31 (4-9-81).

While at first blush the projections appear to have been reasonable, Dr. Shapiro's affidavit has put this factual issue squarely in dispute. Therefore, it can only be resolved at trial.

As noted above, the Board also exercised its powers of appointment on the ground that Telegraph was in an "unsafe and unsound condition to transact business." In the court's view, deciding whether Telegraph was in an unsafe and unsound condition is considerably more complex than deciding whether the institution was insolvent. For this reason, we will defer consideration of the "unsafe and unsound" issue pending our decision on the insolvency issue.

The final requirement under § 1729(C)(2) is that "one or more of the holders of withdrawable accounts in such institution is unable to obtain a withdrawal of his account in whole or in part." In the instant case, the FHLBB sought to satisfy this requirement in the following manner. Immediately after the state officials closed the institution, the Board requested one of its employees, who was a depositor at Telegraph, to attempt to withdraw $25.00. Since the bank had been closed, the demand was refused. The "disgruntled" depositor was, on the spot, presented with an affidavit memorializing the bank's refusal, which he signed. Plaintiff argues that the third requirement of § 1729(c) was intended to limit FSLIC receiverships to those cases in which an association does not in fact have sufficient liquidity to meet depositors' demands. At the time the $25.00 demand was made, Telegraph had over $11 million in liquidity. Shapiro Affid. ¶9 (4-8-81). Plaintiff contends that by seeking to satisfy the requirement through a bit of play acting, the Board renders it meaningless. The Board responds that once an association is closed under state law, depositors *ipso facto*

cannot withdraw their funds. The language of the statute, they say, makes no distinction between situations in which demands are made by lines of panicked depositors and those in which a demand is made by a person acting at the behest of the Board.[14]

While the playlet directed by the Board in this case borders on the farcical, the fault is not with the director but with the script, i.e., the statute. Section 1729(c)(2) proposes three *conjunctive* requirements for the appointment of the FSLIC as receiver. A cursory examination of these requirements reveals that the third requirement (that a depositor be unable to withdraw funds) cannot be given meaning independent of the first (that the association be closed under state law): Once an association is closed, no depositor can get his money. We are aware of the canon of statutory construction which provides that a statute should be construed so as to give effect to all its parts. *General Motors Acceptance Corp. v. Whisnaut*, 387 F.2d 774 (5th Cir. 1968). But with respect to § 1729(c)(2), plaintiffs have shown us no way in which we could interpret the third requirement to give it independent meaning. Plaintiff only states that it should be construed to apply exclusively to the case in which an association is subject to a genuine run on its deposits. Plaintiffs fail to realize that such a run is impossible after an association has already closed its doors.

We therefore find that the third requirement was met after Telegraph was closed and a demand was refused.

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[14] The Board also justifies the use of its own agent to satisfy the third requirement of the statute by the desire to prevent panic among the depositors. The Board points out that plaintiff's argument that an institution may be closed only when it genuinely does not have sufficient cash on hand to pay depositors suggests that conditions conducive to panic must exist before the Board is empowered to act. However, in view of the purpose of § 1464 and § 1729 to preserve public confidence, Sen. Report No. 1263, *supra* at 2536, it would be odd indeed if the Board were required to stay its hand until the crowds were at the association's doors.

SUMMARY

With respect to Count III, we find a genuine issue of material fact on one issue only: the reasonableness of the net worth projections upon which the Board relied in appointing the FSLIC receiver. A trial will be held on this issue. Should plaintiff fail to show by the greater weight of the evidence that the projections were not reasonable, judgment on Count III will be entered in favor of defendants. If, however, the court finds that the projections were unreasonable, it will consider in further proceedings whether any other conditions listed in 12 U.S.C. § 1464(d)(6)(A) existed at the time Telegraph was closed.

The parties are requested to appear at 9:45 a.m. on June 16, 1981, for the purpose of setting a trial date.

DATED: June 9, 1981

ENTER: /s/ JOHN F. GRADY
United States District Judge

APPENDIX G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

* * * * *

Cause No.: 80 C 2782 Date: June 12, 1980

Title of Cause: Telegraph Savings v.
William J. Schilling

Brief Statement of Motion: Ruling

* * * * *

Plaintiff's motion to remand to Circuit Court of Cook County is denied. Motion of defendants, FSLIC and FHLBB to dismiss the action for lack of subject matter jurisdiction, granted. The action is dismissed.

TRO is vacated.

/s/ MARSHALL, J.

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APPENDIX H

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION (FSLIC)
BALANCE SHEET CHANGES
AS A RESULT OF TELEGRAPH SEIZURE
ON MAY, 22, 1980

Phase One

(Acquired by FSLIC, the Corporation, from FSLIC, the Receiver)

Time	Assets Added	Liabilities Added
5:17 p.m. May 22, 1980	$207,000,000 (Telegraph's mortgage loans, etc.)	$207,000,000 (Telegraph's depositors' savings accounts)

Phase Two

	Assets Paid Out	Liabilities Transferred
One Minute Later	$189,500,000 (Check paid to First Federal S&L of Chicago to back up Telegraph's depositors' savings accounts assumed by First Federal S&L of Chicago)	$207,000,000 (Telegraph's depositors' accounts)

After Seizure:	Assets Added to FSLIC Balance Sheet	Liabilities Added to FSLIC Balance Sheet
	$17,500,000	-0-

Note: Telegraph's depositors' savings accounts may have been transferred from FSLIC, the Receiver, directly to First Federal S&L of Chicago; the documentation available to Telegraph is unclear on the point. Even if so, the result is the same.

APPENDIX I

Insolvent Associations as of January 1983*

Association City, State	Net Worth (As of 1-31-83)	Comments
1	$ (249,472)	None.
2	(22,907,624)	None.
3	(79,127,658)	None.
4	(9,784,924)	None.
5	(761,804)	None.
6	(200,525)	None.
7	(400,624)	None.
8	(6,578,424)	None.
9	(479,371)	None.
10	(910,006)	None.
11	(10,018,373)	Conservator appointed.
12	(2,389,727)	None.
13	(2,549,669)	None.
14	(165,943)	None.
15	(24,713,900)	Receiver appointed.
16	(449,062)	Conservator appointed.
17	(176,577)	None.
18	(54,584)	None.
19	(2,213,992)	None.
20	(166,687)	None.
21	(236,786)	None.
22	(2,602,576)	None.
23	(557,613)	None.
24	(99,737)	None.

* This list was produced by FHLBB in *Biscayne Federal Savings and Loan Ass'n. v. FHLBB*, No. 83-815-CIV-EPS (S.D. Fla. filed Apr. 6, 1983) (Plaintiff's Exhibit 147); the accompanying list that identifies the sixty-nine insolvent associations presently is under a protective order.

Association City, State	Net Worth (As of 1-31-83)	Comments
25	$(3,471,141)	None.
26	(27,639)	None.
27	(6,541,817)	None.
28	(371,888)	None.
29	(915,595)	None.
30	(250,043)	*AEC.
31	(244,906)	None.
32	(263,108)	*AEC.
33	(133,963)	*AEC.
34	(1,072,690)	None.
35	(667,282)	None.
36	(464,840)	None.
37	(134,669)	None.
38	(196,824)	None.
39	(8,200)	None.
40	(8,419,529)	None.
41	(4,894,145)	None.
42	(6,978,130)	None.
43	(11,137,449)	None.
44	(1,934,159)	None.
45	(519,757)	None.
46	(172,685)	None.
47	(168,255)	None.
48	(518,857)	None.
49	(1,231,088)	None.
50	(21,997)	None.
51	(1,983,727)	None.
52	(214,840)	None.
53	(3,742,540)	None.
54	(1,640,828)	None.
55	(215,007)	None.
56	(2,978,063)	None.
57	(1,688,908)	None.
58	(189,289)	None.
59	(241,314)	None.
60	(4,849,022)	None.

Association City, State	Net Worth (As of 1-31-83)	Comments
61	$ (207,709)	None.
62	(12,446,194)	Conservator appointed.
63	(7,926,487)	None.
64	(433,140)	None.
65	(1,042,122)	None.
66	(76,819)	None.
67	(5,700,020)	None.
68	(2,429,398)	None.
69	(915,595)	None.

*AEC—net worth figure does not include appraised equity capital. Appraisal report, as submitted by association, has been rejected due to particular deficiencies; however, if dollar amount of appraised value, as presently shown in the appraisal report, is applied against current negative net worth, the association would not be insolvent.

APPENDIX J

LIST OF 266 SAVINGS AND LOAN ASSOCIATIONS PROJECTED TO BE INSOLVENT AS OF APRIL 15, 1983

SAVINGS AND LOAN ASSOCIATIONS WITH PROJECTED NET WORTH OF ZERO OR LESS

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH ($)	ANNUALIZED NET INCOME ($)	PROJECTED NET WORTH* ($)	ASSETS ($)
FIRST FS & LA OF MONROE COUNTY	MONROEVILLE	AL	-640154	-600578	-515612	49171823
BATESVILLE FS & LA	BATESVILLE	AR	1037025	-1572526	-187891	54111309
HERITAGE FS & LA	FAYETTEVILLE	AR	880707	-1227454	-403694	66209280
FIRST FAMILY FS & LA	KEBER SPRINGS	AR	350273	-1149566	-559800	41871013
IKME FS & LA	MOUNTAIN HOME	AR	281938	-476340	-95105	21154288
WASHVILLE FS & LA	WASHVILLE	AR	512150	-455048	-48056	24562025
SOUTH ARKANSAS FS & LA	PINE BLUFF	AR	432628	-805196	-84489	37543297
ARKANSAS VALLEY FS & LA	RUSSELLVILLE	AR	458068	-681360	-84837	37041094
SEARCY FS & LA	SEARCY	AR	709418	-1629840	-580872	45557014
AMERICAN S & LA	SPRINGDALE	AR	1074574	-2038728	-559102	79116423
WASHINGTON S & LA	SPRINGDALE	AR	205793	-529322	-211154	26113123
FIRST FS & LA	STUTTGART	AR	580427	-1223026	-387805	48815945
EAST ARKANSAS S & LA	WEST MEMPHIS	AR	522874	-970414	-231022	44811864
YAGUARO S & LA	PHOENIX	AZ	206404	-334035	-140058	14481840
KERN S & LA	BAKERSFIELD	CA	80434	-174158	-64899	3830053
TWIN PINES FS & LA	BEREFLEY	CA	251130	-1632782	-104173	8888594
FAMILY S & LA	LOS ANGELES	CA	577110	-2993848	-199520	12487407
FOUNDERS S & LA	LOS ANGELES	CA	186911	-2296574	-164967	6794057
FIDELITY SAVINGS OF SF, A FS & LA	SAN FRANCISCO	CA	13543359	-59631920	-3205991	288601958
SAN JOAQUIN FIRST FS & LA	STOCKTON	CA	3816460	-6927914	-1368139	27517888
GUARDIAN S & LA	BRIDGEPORT	CT	220449	-734580	-37691	2803910
COMMUNITY FS & LA	BRIDGEPORT	CT	0	-1295296	-118359	3545427
JEFFERSON FS & LA	WASHINGTON	DC	3628778	-4470634	-698807	51540177
CAPITAL CITY FS & LA	WASHINGTON	DC	4465917	-9947986	-3409577	54113745
INDEPENDENCE FS & LA	WASHINGTON	DC	68008	-1412640	-438257	8167934
HOME FS & LA	WILMINGTON	DE	1158626	-1526648	-499869	5882387
FIRST FS & LA OF DE SOTO CO	ARCADIA	FL	978165	-3308100	-1640748	14210152
FIRST FS & LA OF MID-FLORIDA	DELAND	FL	8643995	-11387340	-2770983	84864489
FIRST FS & LA	DELRAY BEACH	FL	6734047	-21875514	-1055820	84864489
FIRST FLORIDA S & LA	GAINESVILLE	FL	-301132	-1197434	-2434928	8059174
BISCAYNE FS & LA	MIAMI	FL	6908115	-32159694	-2476944	185966078
MIAMI FS & LA	MIAMI	FL	631386	-1632460	-660497	10157274
TROPICAL FS & LA	MIAMI	FL	-43972	-87944	-13594	4434194
CENTURY FS & LA OF ORMOND BEACH	ORMOND BEACH	FL	589	-7688928	-5086479	23809765
STANDARD FS & LA	ATLANTA	GA	1043542	-5878338	-361029	21383494
PEACHTREE FS & LA	ATLANTA	GA	-23766	-4731602	-374702	10449248
FIRST FS & LA OF CRISP COUNTY	CORDELE	GA	-92358	-1379044	-124042	4461747
TRI-CITY FS & LA	HAPEVILLE	GA	91795	-1429108	-17802	6937154
AMERICAN S & LA	DEDEDO	GU	581255	-1590212	-67663	5241322
SCANDIA S & LA	DES MOINES	IA	1289074	-2078956	-353749	72672726
ANTIOCH S & LA	ANTIOCH	IL	559710	-3018770	-1038483	65961388
BATAVIA S & LA	BATAVIA	IL	710593	-974536	-6091	4332384
FIRST AMERICAN S & LA	BENTON	IL	104560	-1588812	-31168	13238832
PUBLIC FS & LA	CALUMET CITY	IL	56084	-1497040	-193211	11657298
MID-STATE S & LA	CARLYLE	IL	170004	-440204	-17826	1527342
COLES COUNTY S & LA	CHARLESTON	IL	128047	-818844	-520220	1884751
THE TALMAN HOME FS & LA OF ILLINOIS	CHICAGO	IL	22746088	-144075886	-4113990	271562106
FIRST FS & LA OF CHICAGO	CHICAGO	IL	46984345	-120698820	-4856706	434011172
CHICAGO FS & LA	CHICAGO	IL	1929593	-16708842	-1138240	58453931
GRUNWALD S & LA	CHICAGO	IL	540149	-1629108	-749562	12518824

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SAVINGS AND LOAN ASSOCIATIONS WITH PROJECTED NET WORTH OF ZERO OR LESS

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH ($)	ANNUALIZED NET INCOME ($)	PROJECTED* NET WORTH ($)	ASSETS ($)
CHICAGO S & LA	CHICAGO	IL	612332	-4022364	-2787041	341164589
UPTOWN FS & LA OF CHICAGO	CHICAGO	IL	159028	-1371858	-1070898	91958527
LINCOLN SQUARE S & LA	CHICAGO	IL	350153	-175410	-63713	8137007
DIXON HOME S & LA	DIXON	IL	578829	-746050	-11794	48845548
CAPITOL FS & LA	EVERGREEN PARK	IL	901847	-3492102	-1862724	139937536
EVERGREEN FS & LA	EVERGREEN PARK	IL	-363910	-3844884	-3407277	115128011
INVESTORS S & LA	FAIRVIEW HEIGHTS	IL	110293	-1208806	-846678	49614478
CARY GROVE S & LA	FOX RIVER GROVE	IL	341550	-429780	-38576	22446307
GUARANTY FS & LA	GLENVIEW	IL	-1352310	-6268564	-4355353	188146631
HOME S & LA OF JOLIET	JOLIET	IL	2070345	-3532776	-2744619	181139882
LANSING FS & LA	LANSING	IL	623873	-1114194	-256406	46944594
FIRST S & LA OF WILL COUNTY	LOCKPORT	IL	796969	-1627516	-491481	71759643
CITIZENS FS & LA OF MATTESON	MATTESON	IL	1682499	-2781522	-519538	118295765
UNION FS & LA OF COOK COUNTY	MATTESON	IL	450947	-1730314	-418885	107287535
PRAIRIE FS & LA CHICAGO HEIGHTS	MATTESON	IL	2504521	-4546788	-1094414	267784151
COLUMBIAN FS & LA	MT CARMEL	IL	13136	-412630	-33529	14199807
MT PROSPECT FS & LA	MT PROSPECT	IL	2414648	-8869800	-2166523	540445523
LINCOLN S & LA	MT ZION	IL	-4495	-19228	-10295	6860185
MILES S & LA	MILES	IL	-200557	-2231186	-185260	7440041
CLYDE FS & LA	NORTH RIVERSIDE	IL	6471251	-5137646	-726419	394820981
FIRST FS & LA OF PEORIA	PEORIA	IL	3221265	-11644098	-7996979	447622458
ILLINOIS VALLEY S & LA	PEORIA	IL	51821	-228884	-17937	8412765
CRAWFORD S & LA	ROMEOVILLE	IL	1345735	-4389530	-1822185	384780737
AMERICAN SAVINGS ASSOCIATION	SPRINGFIELD	IL	11750809	-18619924	-13606631	994158788
BELLWOOD FS & LA	STREAMWOOD	IL	-460199	-1516584	-180512	31866078
AARGO S & LA	SUMMIT	IL	317871	-533290	-121734	27497920
SUMMIT FIRST FS & LA	SUMMIT	IL	616704	-1555516	-414746	74102925
CITIZENS BA	URBANA	IL	365910	-1304464	-460771	45814113
VANDALIA CITIZENS S & LA	VANDALIA	IL	76374	-329900	-184227	13121000
TOWER FS & LA	WESTERN SPRINGS	IL	213612	-2849328	-1179041	85215178
FIRST FS & LA OF WILMETTE	WILMETTE	IL	4010199	-12769315	-3215928	429855574
FIRST FS & LA OF ZION	ZION	IL	331853	-762360	-274665	54285161
FIRST FS & LA OF EAST CHICAGO	EAST CHICAGO	IN	-467397	-2424418	-476178	215201818
FIRST FS & LA OF FORT WAYNE	FORT WAYNE	IN	1390233	-10050488	-6544588	538998832
AMERICAN FS & LA	FORT WAYNE	IN	762990	-1076070	-88899	36613269
FORT WAYNE FS & LA	FORT WAYNE	IN	-326584	-799712	-959889	57268048
GARY FS & LA	GARY	IN	-123174	-394814	-43557	15837588
CAPITOL FS & LA	GARY	IN	1208132	-2096528	-451178	80421261
ARSENAL SA	INDIANAPOLIS	IN	394460	-1534140	-441348	210515782
UNION FS & LA	INDIANAPOLIS	IN	-1175857	-1211370	-1081240	51998829
SOUTH BEND FS & LA	SOUTH BEND	IN	1355962	-2362056	-419999	72432342
CORONADO FS & LA	KANSAS CITY	KS	-204996	-47676	-242760	6911070
SOUTH EAST FS & LA	LOUISVILLE	KY	2639565	-4522497	-820761	133346112
SOUTHERN FS & LA	LOUISVILLE	KY	760116	-1243650	-243883	50294185
SECURITY FS & LA	MAYFIELD	KY	-158810	-1307084	-1181583	46013492
FIRST HOME FS & LA	OWENSBORO	KY	-1252130	-2976188	-1329706	82880622
BATON ROUGE S & LA	BATON ROUGE	LA	1580208	-2096882	-798154	137855148
HERITAGE FS & LA	BOSSIER CITY	LA	17555	-2110898	-1867866	72235481
ST BERNARD FS & LA	CHALMETTE	LA	-107345	-219690	-28166	7654602
RED RIVER S & LA	COUSHATTA	LA	23611	-46900	-13518	6530956

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH ($)	ANNUALIZED NET INCOME ($)	PROJECTED NET WORTH* ($)	ASSETS ($)
PARISH FS & LA	DENHAM SPRINGS	LA	39152	-118684	-54804	4912401
TERREBONNE S & LA	HOUMA	LA	381343	-622744	-110844	43984441
ALLIANCE FS & LA	KENNER	LA	41387	-327768	-134650	33470870
REPUBLIC FS & LA	LAFAYETTE	LA	332593	-327768	-820658	1961864
METRO FS & LA OF LAKES CHARLES	LAKE CHARLES	LA	209891	-1269036	-794663	50156592
LIBERTY FS & LA	LEESVILLE	LA	-80381	-142340	-192967	14700074
GULF FS & LA OF JEFFERSON PARISH	METAIRIE	LA	-1018115	-2979508	-3376892	97487296
MONROE S & LA	MONROE	LA	-1722268	-10830224	-10296515	23166714
CONTINENTAL S & LA	NEW ORLEANS	LA	-250370	-1311970	-1647346	41360990
DIXIE FS & LA	NEW ORLEANS	LA	3196107	-10386434	-4891845	34952481
CRESCENT FS & LA	NEW ORLEANS	LA	56000	-803878	-58228	6880951
UNION FS & LA	PINEVILLE	LA	157459	-509916	-246225	29310037
FIRST FS & LA OF ACADIA	RAYNE	LA	12314	-80740	-51605	11277741
FIRST FS & LA	SPRINGHILL	LA	103108	-192104	-48976	11210720
PEOPLES FS & LA OF THIBODAUX	THIBODAUX	LA	-69728	-139230	-159952	30029922
SECURITY S & LA	VILLE PLATTE	LA	157294	-552216	-279877	56902198
FREEDOM FS & LA	WORCESTER	MA	203780	-14749640	-2141308	800567075
CAPITAL CITY FS & LA	ANNAPOLIS	MD	170439	-1324644	-1036087	44768997
CALVERT S & LA INC	BALTIMORE	MD	-3995462	-9482444	-11502397	391948838
MONTGOMERY FS & LA	BETHESDA	MD	-83	-1344484	-1060055	39829665
GUARDIAN FS & LA	SILVER SPRING	MD	-3587982	-8522852	-10331240	390028582
DEERING S & LA	PORTLAND	ME	110354	-329160	-150231	12241248
SUN S & LA	PORTLAND	ME	2445035	-7425808	-3433730	247486802
ATLANTIC FS & LA	PORTLAND	ME	297235	-604254	-181104	17612705
METROPOLITAN SA	FARMINGTON	MI	-3446963	-13760614	-11549094	413852983
AMERICAN FS & LA	SOUTHFIELD	MI	-1553769	-13946222	-13406331	846041024
GUARANTY FS & LA	TAYLOR	MI	427328	-3316988	-2198691	143826777
UNITED FS & LA OF ALEXANDRIA	ALEXANDRIA	MN	499955	-2217698	-1255723	73871865
MIDWEST FS & LA OF MINNEAPOLIS	MINNEAPOLIS	MN	20010716	-80431058	-27830540	1891545577
NORTHERN FS & LA	ST PAUL	MN	-4528330	-8406310	-9593992	270508984
TRI-LAKES FS & LA	HANSON	MO	-91732	-202022	-251644	13921508
BOONE COUNTY FS & LA OF CENTRALIA	CENTRALIA	MO	204184	-357130	-78544	18425551
PRUDENTIAL S & LA	CLAYTON	MO	-3423161	-9089400	-7564469	400225954
KENNETT S & LA	KENNETT	MO	285364	-527274	-132061	17688798
GIBRALTAR S & LA	MAPLEWOOD	MO	811845	-1332746	-443246	30179158
FIRST FS & LA OF MOBERLY	MOBERLY	MO	-220374	-1314394	-1281438	79114356
NORTHWESTERN S & LA	NORMANDY	MO	-4660198	-5344368	-4099487	93485576
BOHEMIAN S & L	ST LOUIS	MO	-6685454	-7157510	-1735390	137033260
CARONDELET S & LA	ST LOUIS	MO	-16869862	-30844878	-4126873	345534340
PIONEER STATE S & LA	VAN BUREN	MO	1744855	-3855684	-130868	8817441
NORTH MISSISSIPPI S & LA	CLARKSDALE	MS	1884685	-2333316	-35584	165068824
STATE MUTUAL FS & LA	JACKSON	MS	127219	-162722	-1605	17452673
JACKSON FS & LA	JACKSON	MS	-525514	-1693826	-1864460	35945472
NATCHEZ TRACE S & LA	KOSCIUSKO	MS	-25565	-143278	-87862	5001990
SOUTHWEST S & LA	NATCHEZ	MS	150934	-244100	-42312	3518369
FIRST FINANCIAL S & LA	NEW ALBANY	MS	-3614	-394580	-31700	10111898
GENERAL S & LA	RULEVILLE	MS	95643	-133434	-19971	5508101
CLAY COUNTY FS & LA	WEST POINT	MS	251343	-345810	-22439	14085081
NAVCO S & LA	NAVCO	MS	283485	-2349022	-1576157	73354308
EAST FS & LA OF KINSTON	KINSTON	NC	1100739	-5052334	-2899025	187513579

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH ($)	ANNUALIZED NET INCOME ($)	PROJECTED NET WORTH* ($)	ASSETS ($)
MADISON FS & LA	MADISON	NC	335984	-551444	-140576	21031977
CAROLINA FS & LA	BALTIM	NC	593843	-1444284	-550510	60884693
FIRST FS & LA OF GRAND FORKS & MINOT	GRAND FORKS	ND	1750400	-3472204	-4185089	277591930
BLUE VALLEY FS & LA	SCOTTSBLUFF	NE	872758	-1917812	-34041	36513865
FIRST FS & LA	SUPERIOR	NE	206497	-608766	-375443	37033828
FIRST FS & LA OF BERGEN CO	ALLENDALE	NJ	-163001	-1419556	-128581	39049468
TRI-COUNTY S & LA	CAMDEN	NJ	42992	-612986	-442273	29284255
FIRST FS & LA OF BURLINGTON COUNTY	CINNAMINSON	NJ	-595454	-3305394	-2212224	137841352
CAPITAL S & LA	CRANFORD	NJ	-567264	-4887226	-4416318	161634137
METROPOLITAN FS & LA	DENVILLE	NJ	2457903	-4132186	-815411	187088965
ARCH FS & LA	ELIZABETH	NJ	3400389	-3318844	-1268988	120907575
EQUITY S & LA	KEARNY	NJ	-282457	-934?966	-7685910	25996347
HOLLYWOOD S&LA	MAPLEWOOD	NJ	1908444	-2895818	-385919	37555085
KEYSTONE S&LA	NEPTUNE TOWNSHIP	NJ	70169	-4046284	-3133139	113218964
BARTON S & LA	NEWARK	NJ	422863	-7006276	-5123772	170811063
UNIVERSITY S & LA	NORTH BRUNSWICK	NJ	244107	-479218	-451943	34201772
SAYREVILLE S&LA	OLD BRIDGE	NJ	359401	-763788	-209265	44001469
CENTENNIAL S&LA	PENNINGTON	NJ	960175	-1413648	-219491	91721998
QUEEN CITY S&LA	PLAINFIELD	NJ	4692013	-9641554	-384564	357465526
PRINCETON S & LA	PRINCETON	NJ	667425	-5117704	-3544928	139077549
CENTRAL BERGEN S&LA	RIDGEFIELD PARK	NJ	1335527	-3207560	-1201981	122004594
RIVER EDGE S & LA	RIVER EDGE	NJ	-159252	-2753056	-2138832	41925745
SUBURBAN S & LA	WAYNE	NJ	-3961?457	-10770?602	-1240?1918	2605?43959
CORONADA S & LA	ALBUQUERQUE	NM	-3109?03	-1120564	-1198016	34891342
STATE S & LA	CLOVIS	NM	359190	-621636	-652919	16329705
HOME FS & LA	PORTALES	NM	2801136	-5673?4	-169051	30141016
DE VARGAS S & LA OF SANTA FE	SANTA FE	NM	97775	-21333k		3191464
CENTURY FS & LA OF LONG ISLAND	CEDARHURST	NY	-5361426	-21591984	-3057119	76205853
SUFFOLK COUNTY FS&LA	CENTEREACH	NY	10351345	-8064?606	-5349676	2306?40350
SUBURBIA FS & LA	GARDEN CITY	NY	509645	-14416322	-1090277	85547389
ISLAND FS & LA	HEMPSTEAD	NY	303091	-8181214	-617687	28516195
ALLIED FS & LA	JAMAICA	NY	-1735520	-684695	-611490	18395723
CENTRAL FS&LA OF NASSAU COUNTY	LONG BEACH	NY	6672082	-18003190	-7580443	271899724
SOUTH SHORE FS & LA	MASSAPEQUA	NY	-428867	-10?6?028	-803742	36?204605
SENTRAL FS&LA OF NEW YORK CITY	NEW YORK	NY	1453987	-4107904	-1798104	173258981
FIRST FS&LA OF NEW YORK	NEW YORK	NY	-4474584	-21133152	-2120?490	660116080
WASHINGTON FS & LA	NEW YORK	NY	-202183	-1426?636	-133?7020	81446?512
UNION FS&LA OF NEW YORK	NEW YORK	NY	79066	-3816012	-2941964	153834463
FIRST FS&LA OF ROCHESTER	ROCHESTER	NY	2605?619	-8317?818	-397?3120	421?714105
GATEWAY FS & LA	CINCINNATI	OH	738079	-10905076	-1288808	44583?519
UNITED SA	CINCINNATI	OH	27?450	-2?0?224	-2021?94	109?7?395
CONTINENTAL FS & LA	CLEVELAND	OH	11847782	-18256588	-2613?20	1087?4?131
CLEVELAND COMMUNITY SAVINGS COMPANY	CLEVELAND	OH	355681	-372724	-139192	16?65?5
SANDUSKY COUNTY FS & LA	FREMONT	OH	660977	-1531988	-551847	51358113
GLANDORF S & LA	GLANDORF	OH	827038	-1067702	-18226	59752393
WEST SIDE FS & LA	HAMILTON	OH	5159578	-7889270	-1086194	319279396
CITIZENS S & LA	MIDDLETOWN	OH	926809	-2874238	-1352629	63098781
GEM FS & LA	NORWOOD	OH	299074	-794774	-330132	17180064
SOUTHWESTERN FS & LA	CHICKASHA	OK	9379	-197056	-146424	30581480
RIANICHI S & LA	HUGO	OK	-44841	-72346	-102115	6792387

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH ($)	ANNUALIZED NET INCOME ($)	PROJECTED NET WORTH* ($)	ASSETS ($)
EQUITABLE S & LA	PORTLAND	OR	15186478	-33975078	-11710758	134154211
WOODLAWN B & LA	ALTOONA	PA	1	-2468904	-38736	8482750
SECURITY SA	CHESTER	PA	315729	-339614	-25134	9600350
SENTINEL SA	DELMONT	PA	554853	-751246	-39903	3991840
CAMBRIA S & LA	JOHNSTOWN	PA	3653237	-8058368	-2426304	27162474
CENTENNIAL FS & LA	NAZARETH	PA	400404	-605552	-78991	10190235
HAMILTON RELIANCE SA	NORRISTOWN	PA	1843017	-2935132	-480029	11867095
MID-CITY FS & LA OF PHILA	NORTH WALES	PA	140132	-1807618	-1284699	4813855
PROVIDENT SA	PHILADELPHIA	PA	1410723	-857612	-568236	3690335
GUARANTY SA	PITTSBURGH	PA	-3100898	-3394176	-2875454	18952805
FRIENDSHIP FS & LA	PITTSBURGH	PA	3846186	-7914388	-2457371	29197089
GARFIELD FS & LA OF PHILA	POTTSTOWN	PA	-2688922	-4715780	-6076415	71036398
FAJARDO FS&LA OF PUERTO RICO	FAJARDO	PR	135995	-209212	-29631	18000260
HOME FS&LA OF PUERTO RICO	PONCE	PR	-115955	-248524	-317701	18814133
UNITED FS&LA OF PUERTO RICO	SAN JUAN	PR	-1651560	-4702566	-5374425	28451409
RHODE ISLAND FS & LA	PROVIDENCE	RI	431019	-1193340	-467706	11439518
FIRST CAROLINA FS & LA	COLUMBIA	SC	-620053	-4543272	-4178670	11915802
STATE S & LA	WALTERBORO	SC	-22390	-236094	-188464	10017844
1ST DAKOTA HOME S & LA	PIERRE	SD	88941	-610850	-324649	19810936
FIRST FS & LA OF SIOUX FALLS	SIOUX FALLS	SD	751309	-2810268	-1473487	78618918
HOME TRUST S & LA	VERMILLION	SD	170223	-312110	-126364	13202964
FIRST FS & LA OF HARDEMAN COUNTY	BOLIVAR	TN	14758	-358622	-329151	15389078
FIRST FS & LA	BROWNSVILLE	TN	-294476	-1348106	-1164327	12678053
LINCOLN STATE S & LA INC	CHURCH HILL	TN	1131118	-2246508	-1327170	14401369
GEORGE WASHINGTON S & LA INC	JONESBORO	TN	2510134	-3644996	-37755	31807367
FIRST FS & LA	LEWISBURG	TN	2490933	-4855190	-93176	27518409
GUARANTY TRUST S & LA	MEMPHIS	TN	302104	-933114	-436611	25921863
COMMUNITY FS & LA	NASHVILLE	TN	-103114	-175728	-242232	8474414
FIRST FS & LA	WAVERLY	TN	392698	-1456674	-960363	41437557
FIRST SECURITY SA	ABILENE	TX	691480	-1089596	-177056	42126429
HARRIS COUNTY FS & LA	BAYTOWN	TX	3869544	-4701390	-52548	18417507
CENTURY S & LA	BAYTOWN	TX	261374	-648928	-252361	11528322
BIG SPRING SA	BIG SPRING	TX	125618	-737458	-458703	8627492
FIRST S & LA	BURKBURNETT	TX	700938	-886315	-730	35306716
TRINITY VALLEY S & LA	CLEVELAND	TX	296240	-401740	-21804	15150080
PADRE FS & LA	CORPUS CHRISTI	TX	26766	-244394	-186713	4843841
CONSTLANA FS & LA	CORSICANA	TX	219774	-1704936	-1129967	7057726
EL PASO FS & LA	EL PASO	TX	2435859	-5448257	-3525085	17434165
MUTUAL SA OF EL PASO	EL PASO	TX	741798	-5627231	-5196681	31528737
TARRANT SA	FORT WORTH	TX	5104162	-8484166	-1522485	31192374
HI-PLAINS S & LA	HEREFORD	TX	317522	-918234	-409413	3461898
HEIGHTS SA	HOUSTON	TX	2870596	-8779626	-4079783	37815435
COLONIAL S A	HOUSTON	TX	-57667	-5627144	-4508559	11786788
FIRST CAPITAL SA OF TEXAS	HOUSTON	TX	84.862	-1317120	-399858	40490916
INVESTORS SA	HOUSTON	TX	-2169091	-2835652	-3093609	36432045
FIRST FS & LA	MARSHALL	TX	-307451	-1875562	-1791215	63169478
CITIZENS S & LA	MIDLAND	TX	4056221	-2995210	-1314687	81061801
MODERN S & LA	PASADENA	TX	-1646880	-3400644	-4539057	21092552
MISSION FS & LA OF SAN ANTONIO	SAN ANTONIO	TX	18107	-160014	-108571	6172102
TAYLOR S & LA	TAYLOR	TX	162858	-281930	-60337	13983099

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH ($)	ANNUALIZED NET INCOME ($)	PROJECTED NET WORTH* ($)	ASSETS ($)
CENTRAL PLAINS SA	TULIA	TX	-284787	-1360856	-1377965	5483942
VICTORIA SA	VICTORIA	TX	1108141	-1089952	-466818	67818439
METROPOLITAN S & LA INC	ARLINGTON	VA	441751	-766092	-364759	36723515
MIDDLE PENINSULA-NORTHERN NECK S & LA	GLOUCESTER	VA	118283	-1057598	-718982	43614557
ROCKINGHAM S & LA	HARRISONBURG	VA	378600	-807632	-310775	16889578
WASHINGTON-LEE FS & LA	MC LEAN	VA	-3449559	-2123854	-2027989	37347476
FIRST FS & LA	NEWPORT NEWS	VA	-525996	-3559800	-3344171	96495249
PENINSULA S & LA	NEWPORT NEWS	VA	74689	-2226210	-1687727	96459388
COMMUNITY S & LA	NEWPORT NEWS	VA	-13516	-389370	-163432	10679302
CAPITAL S & LA	RICHMOND	VA	392180	-2181092	-1334518	111518060
UNION MUTUAL S & LA	RICHMOND	VA	-6671	-88284	-74565	8113688
FAMILY S & LA, A FS & LA	SPRINGFIELD	VA	113467	-1647826	-1191042	72444210
MOUNTAIN SECURITY S & LA	WITHEVILLE	VA	289005	-547022	-144054	25472495
FIRST FS & LA OF WALWORTH CO	DELAVAN	WI	493709	-951218	-259319	59202484
RICE LAKE S & LA	RICE LAKE	WI	268554	-456536	-92870	15243196
CABELL FS & LA	HUNTINGTON	WV	168384	-431418	-173155	21262085

SAL reporting date is 6/30/82 Home Loan Bank Board release date is 10/25/82

*Date of projection is 4/15/83

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APPENDIX K

LIST OF 1000 SAVINGS AND LOAN ASSOCIATIONS

OPERATING BELOW THE FSLIC MINIMUM

NET WORTH REQUIREMENT

S&Ls WHICH ARE OPERATING BELOW THE FSLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
DANIELSON FS & LA	DANIELSON	CT	2726975	91051588	1.99
SAVINGS B & L CO	SANDUSKY	OH	1988205	66564674	1.99
FIRST FS & LA OF GRAND RAPIDS	GRAND RAPIDS	MN	3586239	119836013	1.99
OREGON PIONEER S & LA	PORTLAND	OR	4673458	156036285	1.99
LACONIA FS & LA	LACONIA	NH	1843527	61871411	1.98
CARDINAL FS & LA	CLEVELAND	OH	39436117	1313193978	1.98
BELL SA OF TEXAS	BELTON	TX	790591	26501827	1.98
HOUSEHOLD FS & LA	WESTMINSTER	CA	6115678	205433550	1.98
GREATER PENNSYLVANIA SA	HAZLETON	PA	444994	15076450	1.97
COMMONWEALTH FIRST FS & LA	DANVILLE	KY	1227085	41279675	1.97
FIRST STATE SA	SEDALIA	MO	4327410	145722434	1.97
HOME S & LA	NEW ORLEANS	LA	595366	20045002	1.97
WESTERLY S & LA	WESTERLY	RI	384066	12993130	1.96
UNITED FS & LA	ROCKY MOUNT	NC	5334863	180771722	1.96
ANNISTON FS & LA	ANNISTON	AL	1243991	42042875	1.96
COMMUNITY SA	SILVERTON	OH	698835	23621975	1.96
OHIO COUNTY FS & LA	HARTFORD	KY	1229970	44962187	1.96
FIRST SA	ORANGE	TX	1783801	60355972	1.96
BRIGHTON FS & LA	BRIGHTON	CO	2997448	101387610	1.96
OLYMPIC S & LA	SAN FRANCISCO	CA	7428006	251148344	2.06
INDEPENDENCE S & LA	VALLEJO	CA	1375059	46509146	2.96
CRUSADER S & LA	ROSEMONT	PA	389567	19980736	2.95
SPRING GARDEN S & L CO	CINCINNATI	OH	2186551	74209871	2.95
HOME S&LC	NORWALK	OH	1216792	75032488	2.95
DEARBORN FS & LA	DEARBORN	MI	4081263	138351162	2.95
ROOSEVELT FS & LA	ST LOUIS	MO	23246773	856150160	2.95
LOCKHART S & LA	LOCKHART	TX	1680626	56995582	2.95
TRINITY S & LA	DALLAS	TX	3990238	135376864	2.95
FIRST EQUITY SA	TOMBALL	TX	1092526	37056483	2.95
UNITED FIRST FS & LA	BOISE	ID	9019761	305480686	2.95
WESTERN HERITAGE FS & LA	PENDLETON	OR	4801318	162589602	2.95
FIRST KEYSTONE FS & LA	CHESTER	PA	5090918	173196068	2.94
SEQUOIA S & LA INC	FIKESVILLE	MD	258643	8798610	2.94
SUBURBAN S & LA	ANNANDALE	VA	9223340	313393688	2.94
MIDWESTERN SA	MACOMB	IL	3406997	115980643	2.94
CITIZENS S & LA OF SPRINGFIELD	SPRINGFIELD	IL	1486233	50574140	2.94
WORTH FS & LA	WORTH	IL	1150474	39151172	2.94
CITIZENS S & LA	EAST ALTON	IL	1262989	42886626	2.94
THE PERPETUAL S & LA	WATERLOO	LA	3584782	122111677	2.94
OVERLAND PARK S & LA	OVERLAND PARK	KS	1226566	41671921	2.94
FIRST FS & LA	NEWTON	KS	2701950	92030858	2.94
LINCOLN S & LA	LOS ANGELES	CA	23458016	798218307	2.94
HERITAGE S & LA	ST GEORGE	UT	1179525	40160947	2.94
DOWN RIVER FS & LA	TAYLOR	MI	11078384	378683920	2.93
FIRST FS & LA OF TUSCOLA	TUSCOLA	IL	819342	27988713	2.93
PALATINE S & LA	PALATINE	IL	2660161	90820837	2.93
BELL S & LA	SAN MATEO	CA	10522296	358745039	2.93
CENTRAL FS & LA	SAN DIEGO	CA	60341412	2059140882	2.93
JACKSON COUNTY S & LA	SYLVA	NC	3119951	107539827	2.92
UNION FS & LA	BATON ROUGE	LA	5714417	195810657	2.92

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S&Ls WHICH ARE OPERATING BELOW THE PSLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
BAY VIEW FS & LA	SAN MATEO	CA	34837442	1194126099	2.92
GEM SA	DAYTON	OH	40404178	1386472776	2.91
STOCKTON S & LA, A FS & LA	STOCKTON	CA	6775044	232471844	2.91
FIRST FS & LA	AMERICUS	GA	1263736	43373251	2.90
FIRST FS & LA	LOUISA	KY	2150130	73850938	2.90
FIRST FS & LA OF CRESTON	CRESTON	IA	2058963	70844738	2.90
FIRST FS & LA	OPELOUSAS	LA	1307087	45092382	2.90
MOUNTAINWEST S & L	OGDEN	UT	6676660	230284901	2.90
COMMUNITY FS & LA	HENDERSONVILLE	NC	694280	24011611	2.89
FIRST FS & LA OF ROCKFORD	ROCKFORD	IL	11661818	403931488	2.89
HOME F & LA OF LA CROSSE	LA CROSSE	WI	1693617	58691914	2.89
SOUTHERN CALIFORNIA S & LA	BEVERLY HILLS	CA	30611273	1058111345	2.89
CENTRAL EVERGREEN FS & LA	CHEHALIS	WA	4087689	141594251	2.89
THE HOMESTEAD S&LA OF UTICA	UTICA	KY	3319440	115057779	2.88
SOUTHWEST VIRGINIA S & LA	ROANOKE	VA	1291574	45406844	2.88
PEOPLES S & LA	STERLING	KS	1837095	63712451	2.88
FIRST FS & LA	ELK CITY	OK	3021414	104784056	2.88
VOLUNTEER FS & LA OF MADISONVILLE	MADISONVILLE	TN	438691	15217058	2.88
FIRST FS & LA OF SPIRIT LAKE	SPIRIT LAKE	IA	1040411	36124247	2.88
SANDIA FS & LA	ALBUQUERQUE	NM	7839605	271911580	2.88
ATASCOSA SA	JOURDANTON	TX	995065	34675478	2.87
BROADWAY FS & LA	LOS ANGELES	CA	1952548	67948001	2.87
RAMSEYS S & LA	RAMSEY	NJ	816704	28509195	2.86
FIRST FS & LA OF DETROIT	DETROIT	MI	128756650	4503163765	2.86
FIRST SA OF BRENHAM	BRENHAM	TX	2468268	87068896	2.86
MID-AMERICA FS & LA	PARSONS	KS	2493728	87335710	2.86
CALIFORNIA FS & LA	LOS ANGELES	CA	261753923	9163654653	2.86
LONG BEACH S & LA	LONG BEACH	CA	1866255	65222973	2.86
FIRST FS & LA	VANCOUVER	WA	14915950	521748101	2.86
BEACON FS&LA	BALDWIN	NY	12454795	436820565	2.85
NIAGARA FIRST S & LA	KENMORE	NY	4451909	156034474	2.85
GREAT VALLEY SA	READING	PA	3822772	134227669	2.85
LINCOLN FS & LA	LOUISVILLE	KY	6331700	222213227	2.85
FIRST FS & LA	MAYFIELD	KY	2334912	81797170	2.85
FIRST FS & LA	RICHMOND	KY	1907642	66880794	2.85
PALMYRA S & LA	PALMYRA	MO	1099207	38547688	2.85
FAR WEST FS & LA	PORTLAND	OR	52034238	1825345838	2.85
GOSHEN S & LA	GOSHEN	NY	208613	7337594	2.84
CHARLESTON FS & LA	CHARLESTON	WV	7674162	269795300	2.84
SECURITY FIRST FS & LA	DAYTONA BEACH	FL	24423954	860304093	2.84
MONTGOMERY S & LA	TROY	MO	1123333	39547202	2.84
FIRST FS & LA OF SOUTHEAST MO	CAPE GIRARDEAU	MO	7055340	248655383	2.84
NORTHWESTERN FS & LA OF WILLISTON	WILLISTON	ND	2467072	86725446	2.84
SAVERS FS & LA	LITTLE ROCK	AR	11566734	407873957	2.84
COAST FS & LA	SARASOTA	FL	20964804	740675013	2.83
FIRST FS & LA OF FORT DODGE	FORT DODGE	IA	3519001	124163373	2.83
SAN ANGELO SA	SAN ANGELO	TX	2733903	96573668	2.83
FIRST FS & LA	MEDFORD	OR	1008445	35634449	2.83
PEOPLES FS & LA	TARENTUM	PA	2675373	94927757	2.82
FIRST FS & LA	WINTER HAVEN	FL	7961472	282041110	2.82

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S&Ls WHICH ARE OPERATING BELOW THE FSLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
FIRST FS & LA OF ENGLEWOOD	ENGLEWOOD	FL	3617700	1[illegible]8282	1.82
UNITED FS & LA	PRESTONSBURG	KY	1140012	40485663	2.82
CALUMET FS & LA	HAMMOND	IN	1369098	48520528	2.82
MIDLAND FS & LA	MOORHEAD	MN	1168023	41453907	2.81
CORNING S & LA	CORNING	AR	299040	10617756	2.82
CAROLINA FS & LA	GREENVILLE	SC	2344601	83361514	2.81
FREEDOM FS & LA	COLUMBUS	OH	10704626	381357075	2.81
NEWPORT FS & LA	NEWPORT	TN	849955	30211313	2.81
CARDINAL S & LA	WEST DUNDEE	IL	940784	33497599	2.81
METROPOLITAN SA	KANSAS CITY	MO	2811095	100142121	2.81
AMERICAN FS & LA	SALEM	OR	8025221	284101550	2.82
AUGUSTA FS & LA	AUGUSTA	GA	1570686	56064405	2.80
FIRST FS & LA OF TIPTON COUNTY	TIPTON	IN	548543	19562040	2.80
RICHARDSON S & LA	RICHARDSON	TX	13795193	493330578	2.80
HOME FS & LA	ALBANY	OR	6564913	234831524	2.80
COLLECTIVE FS & LA	EGG HARBOR CITY	NJ	15330976	548680194	2.79
AMERICAN FS & LA OF LYNCHBURG	LYNCHBURG	VA	5798569	207403194	2.79
FIRST FS & LA	SWAINSBORO	GA	718657	25780893	2.79
HOME S & L CO	CANTON	OH	3875125	138802348	2.79
HOME S & LA	BARTLESVILLE	OK	3824941	137997490	2.79
NEWPORT NEWS S & LA	NEWPORT NEWS	VA	5795799	208370890	2.78
FIRST FS & LA	HALEYVILLE	AL	357301	12854048	2.78
MARION FS & LA	MARION	OH	2737637	98651407	2.78
FREEDOM FS & LA	BERWYN	IL	9226430	333419127	2.78
SOUTHWEST S & LA	PHOENIX	AZ	33659080	1[illegible]852754	2.78
FIRST FS&LA OF HAMMONTON	HAMMONTON	NJ	9298675	335301766	2.77
STATEWIDE S & LA	JERSEY CITY	NJ	8331331	300685574	2.77
NORTH ANNE ARUNDEL FS & LA	PASADENA	MD	322518	11628906	2.77
LINCOLN S & LA	RICHMOND	VA	1773275	63983220	2.77
FIRST FS & LA OF HOPKINS COUNTY	MADISONVILLE	KY	1679668	60642342	2.77
FIRST FS & LA OF HIBBING	HIBBING	MN	2699279	97372070	2.77
NEARNE B & LA	NEARNE	TX	605298	21882006	2.77
LEWIS FS & LA	CHEHALIS	WA	1357479	48964984	2.77
FIRST SOUTHERN FS & LA	MOBILE	AL	20360984	737385058	2.76
FIRST FS & LA	JACKSONVILLE	FL	16172309	[illegible]4913	2.76
SIOUX VALLEY S & LA	CHEROKEE	IA	2367814	85947471	2.76
PLANO S & LA	PLANO	TX	1981358	71850910	2.76
JACKSON COUNTY FS & LA	MEDFORD	OR	7561428	274152129	2.76
FIRST FS & LA OF OLD TOWN	OLD TOWN	ME	330084	11996533	2.75
LAUREL SA	ALLISON PARK	PA	3388304	123322634	2.75
FIDELITY FS & LA	OCALA	FL	3263955	118825621	2.75
FIRST FS & LA OF CHILTON COUNTY	CLANTON	AL	1030045	37499249	2.75
FIRST FS & LA	FRONT ROYAL	VA	743418	27052295	2.75
CITIZENS S & LA	TIFFIN	OH	2458773	89262503	2.75
JEFFERSON SA	WEST JEFFERSON	OH	845724	30772081	2.75
FORT S & LA	FORT ATKINSON	WI	2261021	8[illegible]8415	2.75
FIRST FS & LA	NACOGDOCHES	TX	854014	31100817	2.75
SOUTHWEST SA	DALLAS	TX	2879476	104802115	2.75
FIRST FS & LA	BREAUX BRIDGE	LA	507462	18442970	2.75
FIRST SOUTHERN S A JACKSON COUNTY	PASCAGOULA	MS	864541	31446647	2.75

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
HOME FS & LA	WORCESTER	MA	9141824	333950706	2.74
FAIRVIEW S & LA	EASTON	PA	602047	21962774	2.74
CARTERSVILLE FS & LA	CARTERSVILLE	GA	1697940	62079304	2.74
FIRST FS & LA OF SEMINOLE CO	SANFORD	FL	5610273	205006917	2.74
FIDELITY FS & LA	WEST PALM BEACH	FL	14861281	543064890	2.74
JEFFERSON S & LA	WARRENTON	VA	6062348	221515088	2.74
AMERICAN S & LA	SALT LAKE CITY	UT	67493852	2465259459	2.74
PEOPLES S & LA	MARYSVILLE	KS	4149963	151599476	2.73
ROCKY MOUNTAIN FS & LA	CHEYENNE	WY	10022389	367117806	2.73
DOUGLAS FS & LA	DOUGLAS	GA	1881444	69021112	2.72
HOME FS & LA	WASHINGTON	DC	5877605	216068155	2.72
CHESTER S & LA	CHESTER	SC	306989	11613599	2.64
DOMINION FS & LA	MC LEAN	VA	6469127	237585943	2.72
FUTURE FS & LA	LOUISVILLE	KY	13198508	484998472	2.72
PEOPLES FS & LA	WOOSTER	OH	8059826	296119212	2.72
AMERICAN S & LA INC	KNOXVILLE	TN	1006996	36991711	2.72
AMERICAN S & LA OF PEKIN	PEKIN	IL	1751320	64490537	2.72
SECURITY S & LA	DICKINSON	TX	1434381	52810838	2.72
EQUITABLE SA	ROUND ROCK	TX	859139	31585453	2.72
FLORENCE B & LA INC	FLORENCE	KY	143243	5277086	2.71
SECURITY FS & LA	ELIZABETHTON	TN	701446	25902736	2.71
FIRST FS & LA OF HEGEWISCH	CHICAGO	IL	2952267	108767342	2.71
LEADER FS & LA	LEXINGTON	MA	5425806	200784488	2.70
CLOVER FS & LA	PENNSAUKEN	NJ	168869	6234148	2.70
FIRST SUSQUEHANNA SA	SUNBURY	PA	623664	23079373	2.70
ANNAPOLIS FS & LA	ANNAPOLIS	MD	7364329	279881742	2.70
FIRST FS & LA	DE FUNIAK SPRINGS	FL	1302159	48243060	2.70
DAMEN S & LA	SCHAUMBURG	IL	1605923	59447064	2.70
FIRST FS & LA	AUSTIN	TX	12348390	457812480	2.70
LOUISIANA SA	LAKE CHARLES	LA	9895077	365966493	2.70
COLORADO COUNTY FS & LA	COLUMBUS	TX	4298549	159369097	2.70
FIRST STATE S & LA OF SOUTHEAST ARK	MONTICELLO	AR	457921	16932081	2.70
VALLEY FS & LA	VAN NUYS	CA	43737661	16201903B0	2.70
GREENWICH FS & LA	GREENWICH	CT	4861760	180403374	2.69
WASHINGTON FS & LA	WASHINGTON	DC	12989058	482346712	2.69
MIDWEST HOME S & LA	BELLEVILLE	IL	2788445	103520125	2.69
MORTON FS & LA	MORTON	IL	2874259	106765298	2.69
ILLINOIS GUARANTEE S & LA	EFFINGHAM	IL	1056583	39288180	2.69
RIVERSIDE S&LA OF RIVERSIDE NJ	RIVERSIDE	NJ	1488158	55379906	2.68
HOME FS & LA	CHARLESTON	SC	2067060	7713043	2.68
FIRST S & LA OF ORLAND PARK	ORLAND PARK	IL	913022	34008777	2.68
1ST FS&LA OF ESTHERVILLE & EMMETSBURG	ESTHERVILLE	IA	1450099	54029455	2.68
EQUITY S & LA	LAKEWOOD	CO	83904	3132739	2.68
FIRST FS & LA	YORK	NE	1887217	70326421	2.68
CENTRAL FS&LA OF PUERTO RICO	ARECIBO	PR	3318872	124178917	2.67
HOME UNITY S & LA	LAFAYETTE HILL	PA	12188069	456042639	2.67
SUMMIT SA	PLAINVIEW	TX	3828116	143483819	2.67
ALLIANCE FS & LA	ALLIANCE	OH	2191045	82491068	2.66
FAYETTE FS & LA OF CONNERSVILLE	CONNERSVILLE	IN	1612533	60544516	2.66
FIRST S & LA	FORT STOCKTON	TX	1341466	50396137	2.66

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
EMPIRE S & LA	MESQUITE	TX	837758	31436059	2.66
CONTINENTAL FS & LA	OKLAHOMA CITY	OK	16390073	614011650	2.66
GRIFFIN FS & LA	GRIFFIN	GA	1409625	53173560	2.65
CITIZENS S & L	NORMAL	IL	3227679	121943034	2.65
FIRST FS & LA OF TAYLORVILLE	TAYLORVILLE	IL	937573	35350866	2.65
FIRST FS & LA	FORT SMITH	AR	9816561	370523907	2.65
BRENTWOOD S & LA	LOS ANGELES	CA	28517328	1076692061	2.65
FIRST FS & LA	ATLANTA	GA	5997480	227334911	2.64
PRINCETON FS & LA	PRINCETON	KY	517601	19590972	2.64
CENTRAL FS & LA	CHICAGO	IL	1793905	68054744	2.64
ST LOUIS FS & LA	CREVE COEUR	MO	6991175	264890362	2.64
MUTUAL B & LA	WEATHERFORD	TX	2673402	101244552	2.64
STATE S & LA	LUBBOCK	TX	2268686	85927657	2.64
COLONIAL S & LA	PRAIRIE VILLAGE	KS	5262093	199340446	2.64
SUNBELT FS & LA	WATONGA	OK	779697	29487976	2.64
WESTERN S & LA	PHOENIX	AZ	64885786	2457470090	2.64
GREATER ARIZONA S & LA	PHOENIX	AZ	7243192	274856409	2.64
HARRISHAM FS & LA	CORNELIA	GA	366284	13924362	2.63
MUTUAL S & LA	CHARLOTTE	NC	6710277	254763590	2.63
FALLS FS & LA	INTERNATIONAL FALLS	MN	347514	13208340	2.63
FIRST FS & LA	LINCOLN	NE	29242521	1111848925	2.63
FAMILY FS & LA	FITCHBURG	MA	1139133	43512038	2.62
MERCER S & LA OF GARY	TRENTON	NJ	975383	37290412	2.62
FIRST FS & LA OF GARY	GARY	IN	7359131	280727676	2.62
FIRST FS & LA OF BRAINERD	BRAINERD	MN	3192996	122066946	2.62
TERRITORIAL S & LA	HONOLULU	HI	7083943	270772168	2.62
BERKELEY FS&LA OF NEW JERSEY	MILLBURN	NJ	13036367	499057010	2.61
JERSEY SHORE S & LA	TOMS RIVER	NJ	10453428	401077941	2.61
TREVOSE FS & LA	SOUTHAMPTON	PA	24979105	955838466	2.61
COOK COUNTY FS & LA	CHICAGO	IL	3856739	147853476	2.61
PEOPLES B & LA OF OBLONG	OBLONG	IL	219401	8417574	2.61
JEFFERSON S & LA OF TEXAS	MCALLEN	TX	4105913	157319825	2.61
RICHMOND COUNTY FS & LA	STATEN ISLAND	NY	1348919	51829616	2.60
FIRST FS & LA	FAIRMONT	WV	1046812	40197052	2.60
FIRST FS & LA	ANNAPOLIS	MD	12035280	463413834	2.60
PENINSULA FS & LA	MIAMI	FL	13579228	522708124	2.60
FIRST FS & LA	WALTERBORO	SC	1069866	41077748	2.60
SOUTH SIDE B & LA	LIMA	OH	1753933	67525139	2.60
ROYAL S & LA OF CHICAGO	CHICAGO	IL	1604157	61809356	2.60
OELWEIN FS & LA	OELWEIN	IA	372274	14295757	2.60
PLATTE VALLEY FS & LA	GERING	NE	3126969	120317029	2.60
CAMINO REAL S & LA	SAN FERNANDO	CA	1623138	62455217	2.60
BUILDERS FS & LA	ROCKY MOUNT	NC	1805441	69659498	2.59
FIRST FS & LA OF BEAUFORT	BEAUFORT	SC	2958845	114121780	2.59
FREEPORT S & LA	FREEPORT	IL	1055064	40665630	2.59
DE WITT COUNTY FS & LA	CLINTON	IL	1039801	40149027	2.59
FIRST FS & LA OF MONTEVIDEO	MONTEVIDEO	MN	1066047	41194608	2.59
FIRST FS & LA OF BERESFORD	BERESFORD	SD	1417466	54781695	2.59
ENTERPRISE S & LA	COMPTON	CA	393260	15184129	2.59
KARNES COUNTY S & LA	KARNES CITY	TX	1159991	44969815	2.58

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
WESTBURY FS & LA	WESTBURY	NY	1280901	61461302	2.57
THE LITTLE FALLS S&LA	LITTLE FALLS	NJ	2029204	79033759	2.57
DUVAL FS & LA	JACKSONVILLE	FL	9363812	364668659	2.57
FIRST FS & LA OF CITRUS COUNTY	INVERNESS	FL	3807471	148006644	2.57
FIRST COMMONWEALTH SA	ALEXANDRIA	VA	1359410	52806636	2.57
FIRST FS & LA	JACKSON	TN	1565407	60957898	2.57
FIDELITY FS & LA OF CHICAGO	CHICAGO	IL	4583718	178203411	2.57
SUN BELT FS & LA	LAKE PROVIDENCE	LA	1059113	41268517	2.57
SECURITY FS&LA OF STATEN ISLAND	STATEN ISLAND	NY	2211385	82765363	2.56
UNITED FIRST FS & LA	SARASOTA	FL	29534684	1153570830	2.56
FIRST FS & LA OF DEKALB COUNTY	FORT PAYNE	AL	761499	2979403	2.56
BEVERLY HILLS S & LA	BEVERLY HILLS	CA	18510740	724183448	2.56
WASHINGTON 1ST FS & LA OF GR ST LOUIS	NORMANDY	MO	1753235	68659078	2.55
BAYSIDE FS & LA	BAYSIDE	NY	9570522	376310535	2.54
HOME FS & LA	HAMILTON	OH	4512615	177968970	2.54
PEOPLES S & LA OF BATTLE CREEK	BATTLE CREEK	MI	2477669	97436755	2.54
LISLE S & LA	LISLE	IL	1520737	59893268	2.54
BRIERCROFT SA	LUBBOCK	TX	5031871	198282654	2.54
GRAND PRAIRIE S & LA	STUTTGART	AR	555588	21913207	2.54
FIRST FS & LA	ROCK HILL	SC	4091176	161762867	2.53
FIDELITY FS & LA	TAMPA	FL	3146371	124549114	2.53
FAMILY FS & LA	CEDAR FALLS	IA	1460894	57787586	2.53
FIRST FS & LA	SAN MARCOS	TX	787661	31107079	2.53
LAMPASAS FS & LA	LAMPASAS	TX	681973	26921891	2.53
FIRST BRUNSWICK FS & LA	BRUNSWICK	ME	785490	31031323	2.53
PULAWSKI S & LA	SOUTH RIVER	NJ	3539362	140482871	2.52
ENFIELD S & LA	ENFIELD	NC	506184	20056301	2.52
FIDELITY FS & LA	BALTIMORE	MD	4917782	195441502	2.52
DRUID HILL FS & LA	BALTIMORE	MD	446668	17742757	2.52
FIRST FS & LA	GREENVILLE	SC	21234994	841102157	2.52
NORTHERN VIRGINIA S & LA	ARLINGTON	VA	6940549	275660879	2.52
EQUITABLE FS & LA	LANCASTER	OH	4370992	173491598	2.52
LE ROY S & LA	LE ROY	IL	240747	9570999	2.52
THE GRAVOIS HOME S & LA	ST LOUIS	MO	673409	26747823	2.52
STATE S&LA OF JACKSON HEIGHTS	JACKSON HEIGHTS	NY	7039124	280139803	2.51
FIRST FS & LA	HARRISBURG	PA	6894373	274414519	2.51
FIRST FS & LA	TITUSVILLE	FL	3561409	142096856	2.51
FIRST FS & LA	COLUMBIA	TN	1211867	48352940	2.51
FIRST S&LA OF SOUTHEASTERN LOUISIANA	HAMMOND	LA	484345	19297914	2.51
IRVING S A	IRVING	TX	1781655	70896201	2.51
SAN JACINTO SA	HOUSTON	TX	10429268	415880311	2.51
HOME FS & LA	MEMPHIS	TN	4205437	168469300	2.50
SOUTHWEST S & LA	ABILENE	TX	2294518	91659740	2.50
UNION FS & LA	LAFAYETTE	LA	1273003	51001621	2.50
BROOKLYN FS & LA	BROOKLYN	NY	2393876	96164947	2.49
PICKENS S & LA	PICKENS	SC	653043	26253335	2.49
MUTUAL FS & LA	SOMERSET	KY	2926989	117455540	2.49
MUSKEGON FS & LA	MUSKEGON	MI	5992396	240425498	2.49
WASHINGTON FS & LA OF TAZEWELL CO	WASHINGTON	IL	1261869	50750482	2.49
HOME FS & LA OF SIOUX CITY	SIOUX CITY	IA	3529462	141592764	2.49

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S&Ls WHICH ARE OPERATING BELOW THE FSLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
MID-CONTINENT FS & LA	EL DORADO	KS	1775853	71196042	2.49
SHADOW LAWN S & LA	LONG BRANCH	NJ	1327412	53211907	2.48
MANATEE FS & LA	BRADENTON	FL	2411866	96651177	2.48
CRAGIN FS & LA	CHICAGO	IL	2478856	99355693	2.48
FRONTIER SA	GREEN BAY	WI	3977476	160095538	2.48
PEOPLES SA OF LAWRENCEVILLE	LAWRENCEVILLE	IL	356853	14424920	2.48
ROEBLING S & LA	ROEBLING	NJ	386748	15614576	2.47
FIRST COLONIAL S & LA	HOPEWELL	VA	1183600	47959351	2.47
HOME FS & LA	MARION	OH	3156256	127947242	2.47
MUTUAL S & LA	CANTON	IL	1161276	42838836	2.47
OLNEY S A	OLNEY	IL	7686378	311017389	2.47
DELTA SA	ALVIN	TX	1648803	66812132	2.47
FIRST FS & LA	BRYAN	TX	746440	31061444	2.47
HIGHLAND FS & LA OF LOS ANGELES	LOS ANGELES	CA	2103957	85084479	2.47
NEW LONDON FS & LA	NEW LONDON	CT	4036365	163827757	2.46
BORDER CITY S & LA	PIQUA	OH	1140461	46273174	2.46
HIDALGO S & LA	EDINBURG	TX	1249633	50491221	2.46
FIRST SA OF EAST TEXAS	SAN AUGUSTINE	TX	1115226	45115871	2.46
QUEEN CITY S & LA	SEATTLE	WA	4558621	185682945	2.46
FIRST FS & LA	CHARLOTTE	NC	5815085	238119015	2.45
THE SAVINGS ASSOCIATION OF THE WEST	ARLINGTON	TX	7531373	309180255	2.45
LANDMARK SA	PITTSBURGH	PA	17414230	714501133	2.44
AMERICAN FS & LA	GREENSBORO	NC	347406	14269857	2.44
FIRST AMERICAN S & LA	WOODBRIDGE	VA	4284499	175956395	2.44
STANDARD FS & LA	TROY	MI	89110000	3648106328	2.44
PROVIDENT FS & LA OF PEORIA	PEORIA	IL	2194452	89763728	2.44
FAIRMONT FS & LA	FAIRMONT	MN	1292580	52866763	2.44
IOWA FALLS FS & LA	IOWA FALLS	IA	970031	39806463	2.44
SHELTON S & LA INC	SHELTON	NE	1259565	51727349	2.43
FIRST FS & LA	HARTSVILLE	SC	764776	31489968	2.43
UNITED FS & LA	SAGINAW	MI	14533895	598983635	2.43
RIPON FS & LA	RIPON	WI	1744048	71902234	2.43
METROPOLITAN FS & LA OF FARGO	FARGO	ND	19536976	803497620	2.43
GREATER NEW ORLEANS HMSTD ASSN	METAIRIE	LA	4932804	203233472	2.43
FIRST FS & LA	BIG SPRING	TX	3047533	125535862	2.43
ALAMO SA OF TEXAS	SAN ANTONIO	TX	9880493	407045218	2.43
LIBERTY S & LA	SILOAM SPRINGS	AR	570430	23478310	2.43
FRANKLIN SAVINGS, A FS & LA	SAN FRANCISCO	CA	5747607	236684432	2.43
YORK FS & LA	YORK	PA	10328936	426651855	2.42
ASHLAND HOME FS & LA	ASHLAND	OH	291657	12045609	2.42
FIRST FS & LA OF FULTON CO	ROCHESTER	IN	1342851	63655802	2.42
FIRST S & LA OF SYCAMORE	GENOA	IL	1301936	53851390	2.42
MENDOTA S & LA	MENDOTA	IL	524520	21644231	2.42
BONNE TERRE FS & LA	BONNE TERRE	MO	598571	24998035	2.42
KILLEEN S & LA	KILLEEN	TX	1950808	80524180	2.42
GARVIN COUNTY S & LA	PAULS VALLEY	OK	363596	15120048	2.41
COLORADO RIVER FS & LA	BLYTHE	CA	663272	27560975	2.41
LONDON FS & LA	LONDON	OH	495659	20597309	2.41
FAMILY FS & LA	SAGINAW	MI	993019	41281046	2.41
REGENCY FS & LA	DEKALB	IL	7133597	295784853	2.41

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S&Ls WHICH ARE OPERATING BELOW THE FSLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
FIDELITY FS & LA OF BERWYN	BERWYN	IL	850792	35244978	2.41
CITIZENS FS & LA	SEATTLE	WA	13766913	546112795	2.51
CRESTMONT FS & LA	MAPLEWOOD	NJ	12154083	505037979	2.40
ATLANTIC LIBERTY S&LA	BROOKLYN	NY	4355243	179986743	2.40
PEOPLES S & L CO	ASHTABULA	OH	5777805	238479451	2.40
HOMESTATE SA	SWEETWATER	TX	2740843	114311861	2.40
FIRST GUARANTY S & LA INC.	HATTIESBURG	MS	1956678	81630394	2.40
CITY FS & LA	ELIZABETH	NJ	103092027	4317280839	2.39
FIDELITY MUTUAL S&LA	WESTMONT	NJ	2118245	88808753	2.39
SAYRE S & LA	SAYRE	PA	6394473	286044751	2.39
JEFFERSON FS & LA	WASHINGTON	DC	3628778	151540577	2.39
PIONEER FS & LA	PLYMOUTH	IN	4141579	69919592	2.39
CASS FS & LA OF ST LOUIS	FLORISSANT	MO	1621670	67959650	2.39
AMERICAN FS & LA OF EAST GRAND FORKS	EAST GRAND FORKS	MN	4691190	1177221744	2.39
CYPRESS S & LA	PITTSBURG	IL	2431551	101801610	2.39
COMMONWEALTH FS & LA	LOWELL	MA	13004813	546880411	2.38
HOME FS & LA	BALTIMORE	MD	1692661	71169038	2.38
TWIN CITY FS & LA	BRISTOL	TN	1150731	48319439	2.38
CONESTOGA S & LA	LANCASTER	PA	1301881	54619800	2.38
PEOPLES FS & LA	CONWAY	SC	4787435	201186098	2.37
SECURITY FS & LA	CLEVELAND	OH	4107438	173464488	2.37
MILLS COUNTY S & LA	GLENWOOD	IA	389893	16466859	2.37
SOUTHLAND FS & LA	OPELOUSAS	LA	1431039	60435531	2.37
EQUITABLE S & LA	COLUMBUS	NE	2474266	45981124	2.37
MESA VERDE S & LA	CORTEZ	CO	857990	36193306	2.37
FIRST GUARANTY S & LA	GILLETTE	WY	344216	14533709	2.37
GATE CITY FS & LA	FARGO	ND	13974047	592351268	2.36
WASECA S & LA	WASECA	MN	748106	31689428	2.36
FIRST S & LA	MIDLAND	TX	2440341	103342257	2.36
SOUTHMOST S & LA	BROWNSVILLE	TX	2131320	90468245	2.36
FRANKLIN SA	AUSTIN	TX	6091067	258115251	2.36
RESERVE S & LA	WICHITA	KS	493112	20902455	2.36
FAMILY S & LA	RENO	NV	2386649	101173368	2.36
LLEWELLYN-EDISON S&LA	WEST ORANGE	NJ	1710735	72819618	2.35
CITIZENS FS & LA	ROME	GA	2446590	104321040	2.35
BROKEN ARROW FS & LA	BROKEN ARROW	OK	320531	13651040	2.35
SAN FRANCISCO FS & LA	SAN FRANCISCO	CA	26370470	1122637347	2.35
YORKVILLE FS & LA	CHAPPAQUA	NY	4060358	173208824	2.34
FIRST FS & LA	LIMA	OH	3382807	144727274	2.34
IROQUOIS FS & LA	WATSEKA	IL	3634388	155561677	2.34
AMERICAN FS & LA	HELENA	AR	426362	18235578	2.34
HOME FS & LA	TUCSON	AZ	21189330	906931195	2.34
DOWNEY S & LA	COSTA MESA	CA	37169789	1589008439	2.34
BAKERSTOWN S & LA	VALENCIA	PA	496128	21263741	2.33
CITIZENS FS & LA	MIAMI	FL	30415765	1302966681	2.33
BROOKFIELD FS & LA	BROOKFIELD	IL	3749393	161044153	2.33
HAWKEYE S & LA	BOONE	IA	2383906	102270800	2.33
FIRST FS & LA OF ARIZONA	PHOENIX	AZ	51040675	2191712684	2.33
TWIN BORO FS & LA	EATONTOWN	NJ	296134	12789317	2.32
GEORGE WASHINGTON S & LA INC	JONESBORO	TN	251034	10807367	2.32

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
MITCHELL HOME S & LA	MITCHELL	SD	497013	21406905	2.32
FLAGLER FS & LA	MIAMI	FL	19919059	860436270	2.31
BARRON COUNTY FS & LA	BARRON	WI	2185574	94655533	2.31
SECURITY S & LA	PEORIA	IL	4700675	203511781	2.31
ELMHURST FS & LA	ELMHURST	IL	4506495	194842699	2.31
FIRST FS & LA	BAKERSFIELD	CA	2148150	93004605	2.31
WORLD S & LA, A FS & LA	OAKLAND	CA	18025818	779876441	2.31
SECURITY FS & LA	JASPER	AL	614406	26639976	2.30
FIRST FS & LA OF MADISON	MADISON	WI	7624419	331703033	2.30
NORFOLK FIRST FS & LA	NORFOLK	NE	1350057	58643088	2.30
FIRST FS & LA OF MCNAIRY COGNTY	SELMER	TN	3136916	136390148	2.30
FIRST FS & LA OF MORRILTON	MORRILTON	AR	1341617	58093674	2.31
TYLER S & LA	TYLER	TX	5130789	222956007	2.30
INTERSTATE S & LA	PERRYTON	TX	2126830	92421215	2.30
AMERICAN FS & LA	ALBUQUERQUE	NM	3656159	160387925	2.28
SOUTHEASTERN S & LA	WAYNESBORO	MS	2656116	115533116	2.30
SIDNEY FS & LA	SIDNEY	NE	651116	28453116	2.29
VIRGINIA BEACH FS & LA	VIRGINIA BEACH	VA	6911741	300540015	2.30
FIRST FS & LA OF OAKLAND	PONTIAC	MI	37955852	1651810268	2.30
FRONTIER FS & LA	LIBERAL	KS	17476448	757474778	2.31
FIRST FS&LA OF REDDING	REDDING	CA	2446222	1070036361	2.29
SECURITY SA	CHESTER	PA	2019760	44857382	4.50
FIRST S & LA OF W MISSISSIPPI	LAURANOLA	MS	447749	9600330	4.66
FIRST FS & LA	LOGAN	UT	830601	18575135	4.47
BANKERS FS & LA	NEW YORK	NY	804552	17157304	4.69
ALBANY FIRST FS & LA	ALBANY	GA	6034587	269648311	2.23
HERITAGE S & LA	BALES CORNERS	WI	3288120	146807633	2.23
INDEPENDENCE FS & LA	BATESVILLE	AR	876871	39168180	2.23
LYONS S & LA	STICKNEY	IL	3244036	145042228	2.24
BEN FRANKLIN S & LA	OAK BROOK	IL	1902181	85327308	2.23
CAPITAL S & LA	JEFFERSON CITY	MO	3203018	143393234	2.23
FARIBAULT FS & LA	FARIBAULT	MN	3650827	164004952	2.23
FIRST FS & LA	MAGNOLIA	AR	680595	30498238	2.23
CENTRAL S & LA	FOREST	MS	1334642	59958404	2.23
CENTRAL FS & LA	CHARITON	LA	131178	5889947	2.23
AUDUBON S & LA	AUDUBON	NJ	1858375	83661070	2.22
SUSQUEHANNA S A	WILKES-BARRE	PA	355907	15205752	2.34
DAKOTA S & LA	SIOUX FALLS	SD	3746548	169778871	2.21
AMERICAN FS & LA	GREENVILLE	SC	779730	35355846	2.21
CHESAPEAKE S & LA	NORFOLK	VA	14913708	679083802	2.20
CAMBRIDGE S & LA	CAMBRIDGE	OH	3239934	147604768	2.20
MARION COUNTY MUTUAL L & BA	HANNIBAL	MO	2594723	118080397	2.20
UNITED FS & LA	NEW ORLEANS	LA	982897	44748443	2.20
FIDELITY FS & LA	DOUGLAS	AZ	697139	31641393	2.20
GIBRALTAR S & LA	BEVERLY HILLS	CA	779701	35428512	2.20
WHITE HORSE S & LA	TRENTON	NJ	103196748	4682683815	2.20
MAGYAR S&LA OF NEW BRUNSWICK NJ	NEW BRUNSWICK	NJ	620163	28321133	2.19
HORSEMERE FS & LA	FORT LEE	NJ	1803196	82401765	2.19
NEWTON S & LA	NEWTON	NJ	3656227	167272262	2.19
MECHANICS B & LA	CHAMBERSBURG	PA	572044	26073837	2.19
			597662	27260699	2.19

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
HOME FS & LA	DUNN	NC	1135502	51772554	2.19
THE BROADVIEW S & LC	CLEVELAND	OH	4366131	199573766	2.19
DETROIT & NORTHERN S & LA	HANCOCK	MI	2601534	118668861	2.19
MT PLEASANT S & LA	MT PLEASANT	TX	710930	32409668	2.19
SOUTHERN S & LA	BROWNWOOD	TX	4453000	203065474	2.19
NEW BRAUNFELS S & LA	NEW BRAUNFELS	TX	617092	28139615	2.19
LINCOLN FS & LA	LINCOLN	NE	2003636	91517406	2.19
LOGAN FS & LA	LOGAN	OH	1818812	82951011	2.19
FIRST FS & LA OF DEARBORN	DEARBORN	MI	4956706	225954784	2.19
FIRST FS & LA OF NORTHERN VIRGINIA	ALEXANDRIA	VA	5842706	266847334	2.19
UNITED FS & LA	SMYRNA	GA	1758024	80276970	2.19
MCHENRY S & LA	MCHENRY	IL	1294091	59081490	2.19
FIRST S & LA	WARREN	AR	314731	14370661	2.19
CITIZENS FS & LA OF RICHLAND PARISH	RAYVILLE	LA	446851	20388149	2.19
PRESIDIO S & LA	PORTERVILLE	CA	442053	20171449	2.19
SAN MARINO S & LA	SAN MARINO	CA	215193	9819813	2.19
STATE S & L CO	SOUTH EUCLID	OH	8496186	384790175	2.21
PAN AMERICAN S & LA	SAN FRANCISCO	CA	176861	8130379	2.18
FAYETTEVILLE FIRST FS & LA	FAYETTEVILLE	TN	76988	3491401	2.20
FIRST FS & LA OF WATERLOO	WATERLOO	IA	2985379	135845611	2.20
WINDOM FS & LA	WINDOM	MN	1161154	52869815	2.20
GUARANTY FS & LA	GALVESTON	TX	8590584	390836177	2.20
GREAT FALLS FS & LA	GREAT FALLS	MT	4153349	189034446	2.20
UMPQUA S & LA	ROSEBURG	OR	2340243	106607316	2.20
CHATHAM S & LA	CHATHAM	NJ	886258	40414066	2.19
NATIONAL PERMANENT FS & LA	WASHINGTON	DC	22144477	1041289080	2.13
FIDELITY S & L CO	MARTINS FERRY	OH	1570199	73401167	2.14
OK FS & LA	EL RENO	OK	946788	44256220	2.14
TRI FS & LA	WAHOO	NE	621938	29120025	2.14
FIRST FS & LA OF PROVISO TOWNSHIP	HILLSIDE	IL	1760082	82254410	2.14
TRI-STATE S & LA	IUKA	MS	278009	12923898	2.15
OLYMPIC S & LA	SEATTLE	WA	2187866	102301842	2.14
SECURITY FIRST FS & LA	PITTSBURGH	PA	4679480	219056666	2.14
SOUTH VIEW S & LA	PITTSBURGH	PA	643507	30316485	2.12
PROGRESS FS & LA	BRIDGEPORT	PA	2043693	96437779	2.12
METROPOLITAN FS & LA OF EASTERN PA	BALA CYNWYD	PA	13007390	615470819	2.11
SOUTH GATE FS & LA	FT MITCHELL	KY	2048542	97279413	2.11
HIGHLAND S & LA	HIGHLAND	IL	393073	18588917	2.11
WESTERN FS & LA OF SPARTA	SPARTA	WI	2653615	126251198	2.10
MOUNTAIN STATE FS & LA	CLARKSBURG	WV	1871360	89750571	2.09
JEFFERSON FS & LA	MORRISTOWN	TN	889114	42545238	2.09
STATE S & LA	STOCKTON	CA	107808271	5151903014	2.09
WESTERN HILLS L & D CO	CINCINNATI	OH	493448	23758815	2.08
GUARDIAN S & LA	CHICAGO	IL	1286156	61778044	2.08
FIRST CAPITAL SA OF TEXAS	HOUSTON	TX	842862	40490916	2.08
FIRST FS & LA OF MARTIN CO	STUART	FL	4973179	240557032	2.07
FIRST FS & LA	LAS VEGAS	NV	643060	31112317	2.07
FIRST FS & LA	ALEXANDRIA	LA	2974237	143773653	2.07
FRANKLIN SA	OTTAWA	KS	11124729	537705084	2.07
FIRESIDE FS & LA	CICERO	IL	847940	41227173	2.06

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
NORTH AMERICAN SA	GRANDVIEW	MO	5990839	291241429	2.06
BURNET COUNTY S & LA	BURNET	TX	488523	23744049	2.06
WESTERN S & LA	CHICAGO	IL	1076596	52433506	2.05
CORINTH FS & LA	CORINTH	MS	667125	32480877	2.05
COLUMBIA BANKING FS & LA	ROCHESTER	MN	19780614	971649793	2.03
HOMESTEAD S & LA	WOODWARD	OK	2438217	119490032	2.04
FIRST FS & LA	MISSOULA	MT	1445285	70749755	2.04
FIRST FS&LA OF MONTCLAIR	MONTCLAIR	NJ	2205588	108910193	2.02
SALAMANCA FS & LA	SALAMANCA	NY	181302	8985097	2.02
DADE S & LA	MIAMI	FL	43487387	2145561297	2.03
LASE S & LA	CHICAGO	IL	546483	26933961	2.03
GERMANIA FS & LA	BALTIMORE	MD	848322	42070385	2.02
HOME S & LA	AURORA	IL	5485748	271009637	2.02
LINCOLN-DOUGLAS S & LA	JACKSONVILLE	IL	1886178	93369709	2.02
HOME FS & LA	JONESBORO	AR	368522	18113300	2.03
RIVERSIDE S & LA	RIVERSIDE	IL	406184	19922918	2.03
FIRST FS & LA	EUNICE	LA	237113	11682492	2.03
SOUTHERN FS & LA	GULFPORT	MS	1070658	53136342	2.01
MORTON S & LA	MORTON	PA	137389	6880435	2.00
SECURITY FS & LA	PANAMA CITY	FL	1019848	50951481	2.00
HOME FS & LA	PADUCAH	KY	2657278	132790824	2.00
BLOOMINGTON FS & LA	BLOOMINGTON	IL	17499605	884436222	1.98
LINCOLN FS & LA	WESTFIELD	NJ	13058081	654799330	1.99
SHENANDOAH FS & LA	MARTINSBURG	WV	1129180	56847431	1.98
MERCER FS & LA	BARRODSBURG	KY	556160	27918710	1.99
ROCK ISLAND S & LA	ROCK ISLAND	IL	1358861	68136480	1.99
MID AMERICA FS & LA	CICERO	IL	13341202	671059878	1.99
CENTURY S & LA	CHICAGO	IL	344792	17304201	1.99
HARRIS COUNTY FS & LA	BAYTOWN	TX	3669844	184428507	1.99
LAFAYETTE FS & LA	LAFAYETTE	LA	2243719	113765367	1.99
FAMILY S & LA	NEW HAVEN	CT	4688409	237706220	1.98
PARKVALE SA	PITTSBURGH	PA	9872067	544468642	1.98
HOME FS & LA	WILMINGTON	DE	4158626	208621587	1.98
CITIZENS FS & LA	CLEVELAND	OH	7383884	372553832	1.98
SOUTH EAST FS & LA	LOUISVILLE	KY	2639965	133346112	1.98
RAVENNA S & L CO	RAVENNA	OH	1254277	63420925	1.98
LIFE S & LA OF AMERICA	MELROSE PARK	IL	4873107	246017699	1.98
PIONEER STATE S & LA	VAN BUREN	MO	174465	8817441	1.98
DOLLAR SA	COLUMBUS	OH	8534044	432426628	1.97
GATE CITY B & LA	RATON	NM	254197	12928414	1.97
CENTRAL TEXAS S & LA	MARLIN	TX	3198179	162322234	1.97
FIRST FS&LA OF PUERTO RICO	SANTURCE	PR	19985341	1021843602	1.96
VALLEY FS & LA	EASTON	PA	4499338	229044048	1.96
VIRGINIA FS & LA	RICHMOND	VA	10922682	556250125	1.96
TRINITY VALLEY S & LA	CLEVELAND	TX	296240	15150080	1.96
FIRST FS & LA OF HASTINGS	HASTINGS	NE	516338	26539202	1.95
MINERAL WELLS S & LA	MINERAL WELLS	TX	493421	25263779	1.95
FIRST FS & LA	BATON ROUGE	LA	784402	40287156	1.95
CHEROKEE FS & LA	CHEROKEE	OK	250644	12811136	1.95
SANDIA FS & LA WEST	GALLUP	NM	616742	31835722	1.94

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S&Ls WHICH ARE OPERATING BELOW THE FSLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
PEOPLES S & LA	LLANO	TX	1310715	67520460	1.94
MILFORD FS & LA	MILFORD	MA	1845052	95524665	1.93
SUNRISE FS & LA	FARMINGDALE	NY	6329876	328672499	1.93
CHASE FS & LA	MIAMI	FL	30263343	1570208514	1.93
HERITAGE FS & LA	MONROE	NC	5720622	296605941	1.93
AMERICAN FS & LA OF DUVAL CO	JACKSONVILLE	FL	1660755	86019080	1.93
PEERLESS FS & LA OF CHICAGO	CHICAGO	IL	2429149	125854479	1.93
FIRST FS & LA OF ELGIN	ELGIN	IL	2907079	150624814	1.93
STATEWIDE S & LA	KINGSTON	NY	2070608	107638867	1.92
GEORGE WASHINGTON S & LA	OAK LAWN	IL	1123775	5839485	1.92
BENJAMIN FRANKLIN SA	HOUSTON	TX	8672284	347882852	1.92
FIRST S & LA OF SUFFOLK	SUFFOLK	VA	2112164	110083661	1.91
PIONEER FS & LA	CLEARWATER	FL	32406779	1699834427	1.91
PARK VIEW FS & LA	CLEVELAND	OH	6634495	346844012	1.91
COLONIAL FS & LA	CAPE GIRARDEAU	MO	2841274	148930086	1.91
SANTA BARBARA S & LA	SANTA BARBARA	CA	40124848	2096093871	1.91
FIRST FS & LA	PINEVILLE	KY	907345	47857372	1.90
FIDELITY FS & LA OF SEYMOUR	SEYMOUR	IN	1619641	85451584	1.90
FORT DEARBORN FS & LA	CHICAGO	IL	612111	32137443	1.90
BROWNFIELD S & LA	BROWNFIELD	TX	846882	45716026	1.90
LINCOLN-WAY S & LA	NEW LENOX	IL	993221	52625747	1.89
SECURITY FS & LA	ALBUQUERQUE	NM	3318878	176011890	1.89
COLUMBIA S & LA	BEVERLY HILLS	CA	10789286	571389489	1.89
WOODRUFF COUNTY S & LA	AUGUSTA	AR	124271	6625243	1.88
ARSENAL SA	INDIANAPOLIS	IN	3944480	210555881	1.87
SOUTH BEND FS & LA	SOUTH BEND	IN	1355962	72423242	1.87
ARCOLA HOMESTEAD & LA	ARCOLA	IL	100177	5370696	1.87
MORRISTOWN FS & LA	MORRISTOWN	TN	1613187	86846749	1.86
BIG COUNTRY SA	STAMFORD	TX	1776472	95461670	1.86
UNITED FS & LA	VIDALIA	LA	461292	24834379	1.86
SANTA PAULA S & LA	SANTA PAULA	CA	3193341	171735101	1.86
STANDARD FS & LA	COLUMBIA	SC	7546151	407117635	1.85
FIRST HOMESTEAD FS & LA	NEW ORLEANS	LA	10961665	592954432	1.85
CITIZENS FS & LA	MARYSVILLE	OH	1757295	95669437	1.84
KNOX FS & LA	KNOXVILLE	TN	3010695	163841558	1.84
AMERICAN HERITAGE S & LA	BLOOMINGDALE	IL	4034865	220420110	1.84
FIRST S & LA OF BUREAU CO	SPRING VALLEY	IL	1042257	56900108	1.84
MILE VALLEY FS & LA	SCOTTSBLUFF	NE	672558	36513865	1.84
HUMBOLDT FS & LA	EUREKA	CA	5083703	275357229	1.84
ORANGE COAST S & LA	COSTA MESA	CA	1177163	64492803	1.83
WEST MEMPHIS FS & LA	WEST MEMPHIS	AR	643138	35338416	1.82
FLUSHING FS & LA	FLUSHING	NY	7231943	399597440	1.81
CHARTER FS & LA	BRISTOL	VA	6397442	353604123	1.81
WOMENS FS & LA	CLEVELAND	OH	10799240	597021592	1.81
AMERICAN S & LA OF BRAZORIA	LAKE JACKSON	TX	1559410	86251724	1.81
WOODLAWN B & LA	ALIQUIPPA	PA	136730	8692740	1.80
FIDELITY FS & LA	JACKSONVILLE	FL	5063808	280658132	1.80
FIRST FS & LA	LARGO	FL	6991387	387703886	1.80
WEST TOWN S & LA	CICERO	IL	362600	20200289	1.80
MID MISSOURI S & LA	BOONVILLE	MO	1286455	71477588	1.80

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
PROGRESSIVE S & LA	NATCHITOCHES	LA	515043	28586789	1.80
MONARCH FS & LA	KEARNY	NJ	1767735	97731668	1.79
HAVEN FS & LA	WINTER HAVEN	FL	2858570	159389109	1.79
GIBSON FS & LA	GIBSON CITY	IL	3825814	213826174	1.79
MISSOURI SAVINGS ASSOCIATION	CLAYTON	MO	8539435	476052929	1.79
FIRST FS & LA OF TURNER CO	ASHBURN	GA	197294	11113657	1.78
CLAY COUNTY FS & LA	WEST POINT	MS	251343	14083081	1.78
GRAHAM S & LA	GRAHAM	TX	783226	44063581	1.78
FELLOWSHIP S & LA	BERGENFIELD	NJ	1836101	103609066	1.77
CITIZENS FS & LA	FORT PIERCE	FL	3478676	196583880	1.77
SCANDIA S & LA	DES MOINES	IA	1280974	72672376	1.77
LANDMARK SAVINGS ASSOCIATION	ENNIS	TX	867384	49008382	1.77
RICE LAKE S & LA	RICE LAKE	WI	266554	15243196	1.76
HERITAGE S & LA	JACKSON	MO	1077580	61033696	1.76
NEW BRITAIN FS & LA	NEW BRITAIN	CT	1867298	106227460	1.75
MAGNOLIA FS & LA	KNOXVILLE	TN	87018	4981535	1.75
EAST TENNESSEE S & LA INC	KNOXVILLE	TN	242540	13956420	1.75
WAYNE S & LA	FAIRFIELD	IL	356431	20264107	1.75
BENTON COUNTY S & LA	BENTONVILLE	AR	1049474	61082477	1.75
OLD BOROUGH S&LA	TRENTON	NJ	1716149	98803612	1.74
REVERE S & LA	BERNARDSVILLE	NJ	973478	55798384	1.74
GEM FS & LA	NORWOOD	OH	299074	17180064	1.74
PROSPECT FS & LA OF NOTHERN ILLINOIS	LOMBARD	IL	1521918	87219373	1.74
COMMONWEALTH S & LA	OSCEOLA	AR	444092	25460875	1.74
GENERAL S & LA	RULEVILLE	MS	95664	5508101	1.74
ATLANTIC FINANCIAL FS & LA	PHILADELPHIA	PA	21206357	1228545605	1.73
HOMESTEAD SA	MIDDLETOWN	PA	1185054	68641405	1.73
BLACK DIAMOND S & LA INC	NORTON	VA	441774	25546072	1.73
SECURITY SA	TEXARKANA	TX	1340102	88964930	1.73
PIONEER FS & LA OF HAWAII	HONOLOLU	HI	5937809	342369823	1.73
NORTH JERSEY S&LA	PASSAIC	NJ	8171166	476051899	1.72
UNITED FS & LA	WAYCROSS	GA	1188018	69000244	1.72
PINE BELT FS & LA	HATTIESBURG .	MS	1146349	66666391	1.72
FIRST FS & LA	SLIDELL	LA	467132	27111583	1.72
LONGVIEW S & LA	LONGVIEW	TX	3104063	180301281	1.72
COMMUNITY S & LA	BATON ROUGE	LA	198011	11490205	1.72
HOME FS & LA	COLUMBUS	GA	2377479	138705249	1.71
SUPERIOR SAVINGS ASSOCIATION	CLEVELAND	OH	1645012	96065004	1.71
UNITED GUARANTY S & LA INC	TULLAHOMA	TN	342007	20030283	1.71
SOUTH ARKANSAS FS & LA	PINE BLUFF	AR	432628	25472027	1.70
ATLANTIC FS & LA	PORTLAND	ME	297235	17622202	1.69
DUNCAN S & LA	DUNCAN	OK	1933374	114243920	1.69
COUNTY FS & LA	WESTPORT	CT	2807002	167309988	1.68
INVESTORS S&LA OF HENDERSONVILLE INC	HENDERSONVILLE	TN	598036	35615083	1.68
SALINE VALLEY FIRST FS & LA	HARRISBURG	IL	919976	54823613	1.68
HOME FS & LA OF HARLAN	HARLAN	IA	1640974	97774391	1.68
COLONIAL FS & LA	GROSSE POINTE WOODS	MI	3537499	211892846	1.67
HOME S & LA	LUFKIN	TX	1871591	111778142	1.67
GILL SA	HONDO	TX	13797713	827948890	1.67
HOME OWNERS FS & LA	BOSTON	MA	7416364	447790810	1.66

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
BATAVIA S & LA	BATAVIA	IL	710591	42701179	1.65
ILLINOIS-SERVICE FS & LA	CHICAGO	IL	1634901	98-83826	1.66
CLYDE FS & LA	NORTH RIVERSIDE	IL	6471551	392420983	1.66
ARKANSAS VALLEY FS & LA	RUSSELLVILLE	AR	458008	27641092	1.66
SECURITY S & LA	TUCSON	AZ	2176579	131203361	1.66
GATEWAY FS & LA	CINCINNATI	OH	7364379	445836519	1.65
FINANCIAL FS & LA OF OLYMPIA FIELDS	OLYMPIA FIELDS	IL	5529117	335368326	1.65
HOME FS & LA OF ELGIN	ELGIN	IL	5290762	320761875	1.65
SUPERIOR FS & LA	FORT SMITH	AR	5369963	324516489	1.65
TARRANT SA	FORT WORTH	TX	5164162	313923374	1.65
AMERICAN S & LA OF FLORIDA	MIAMI	FL	41420748	2511533174	1.64
VICTORIA SA	VICTORIA	TX	1108561	67618439	1.64
STANDARD FS & LA	GAITHERSBURG	MD	6673569	408411009	1.63
HOMESTEAD FS & LA	DAYTON	OH	3559165	218039716	1.63
HOME FS & LA	MANCHESTER	TN	393719	24133377	1.63
LIVINGSTON S & LA	LIVINGSTON	TX	701478	42930333	1.63
COUNTY SA	ESSINGTON	PA	145149	8939431	1.62
NEWTOWN SA	NEWTOWN	PA	1362705	84251768	1.62
SECURITY FS & LA	RICHMOND	VA	4055002	250060646	1.62
WEST SIDE FS & LA	HAMILTON	OH	3159278	195279396	1.62
FIRST FS & LA	COFFEYVILLE	KS	1812257	111701688	1.62
KENNETT S & LA	KENNETT	MO	285364	17688798	1.61
MADISON FS & LA	MADISON	NC	3135984	21031977	1.60
ARLINGTON HEIGHTS FS & LA	ARLINGTON HEIGHTS	IL	5871558	367788542	1.60
TESORO S & LA	LAREDO	TX	697366	43500252	1.60
BURLINGTON S & LA	BURLINGTON	WI	859492	54191042	1.59
CITIZENS S & LA	BATESVILLE	MS	320419	19491860	1.59
HOME FS & LA	LAFAYETTE	AL	678779	42987695	1.58
NORWOOD FS & LA	CHICAGO	IL	2598188	163963044	1.58
FIRST FINANCIAL S & LA	KNOXVILLE	IA	1195576	75763552	1.58
COLONIAL S & LA	ROSELLE PARK	NJ	4101367	259771424	1.57
ILLINI FS & LA	FAIRVIEW HEIGHTS	IL	4353464	274998384	1.57
EL PASO FS & LA	EL PASO	TX	2721659	172451824	1.57
GUARANTY S & LA	ST PETERSBURG	FL	5674637	363837840	1.56
MERCURY SAVINGS, FS & LA	HUNTINGTON BEACH	CA	19722633	1267298616	1.56
HAMILTON RELIANCE SA	NORRISTOWN	PA	1843617	118610595	1.55
EAST ARKANSAS S & LA	WEST MEMPHIS	AR	322874	20851867	1.55
FIRST FS & LA	BOSTON	MA	3644124	236432776	1.54
ORANGE FS & LA	WINTER GARDEN	FL	724589	47012376	1.54
ANDREW JACKSON STATE S & LA	TALLAHASSEE	FL	1117938	72473476	1.54
HOME FS & LA OF ROCKFORD	ROCKFORD	IL	3350145	231114029	1.54
NEW ORLEANS FS & LA	NEW ORLEANS	LA	1383246	89655122	1.54
CONCORDIA FS & LA	EVERGREEN PARK	IL	4713126	307260989	1.53
CARY GROVE S & LA	FOX RIVER GROVE	IL	341250	22446307	1.52
MUTUAL FS & LA	MASON CITY	IA	1889650	124700721	1.52
FIRST FS & LA OF THE FLORIDA KEYS	KEY WEST	FL	4397858	290979276	1.51
COMMUNITY FS & LA	TAMPA	FL	114688	7590096	1.51
TALLADEGA FS & LA	TALLADEGA	AL	279851	18536119	1.51
SOUTHERN FS & LA	LOUISVILLE	KY	760114	50294165	1.51
COLUMBUS FS & LA	COLUMBUS	NE	1432679	94853638	1.51

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
COMMUNITY FS & LA	HIALEAH	FL	2133347	143309604	1.50
FIRST FS & LA	MILLEDGEVILLE	GA	491362	43349038	1.50
BOME SA	ODESSA	TX	1472101	98553850	1.50
HERITAGE FS & LA	HUNTINGTON	NY	4305627	302349207	1.49
TALLAHASSEE FS & LA	TALLAHASSEE	FL	3749982	251414940	1.49
PRAIRIE FS & LA CHICAGO HEIGHTS	MATTESON	IL	2506223	167764131	1.49
CENTURY S & LA	BAYTOWN	TX	261374	17528322	1.49
CARTERET S & LA, FA	NEWARK	NJ	31663753	2144127648	1.48
FIRST FS & LA OF MID-FLORIDA	DELAND	FL	8243995	556456872	1.48
COMMONWEALTH S & LA	MANASSAS	VA	725868	49445694	1.48
DURAND FS & LA	DURAND	WI	1369092	92635350	1.48
HEARTLAND FS & LA	WAUCHULA	FL	776813	53023557	1.47
FIRST FS & LA	BRONSON	FL	605165	41167306	1.47
CAMBRIA S & LA	JOHNSTOWN	PA	3955237	271625474	1.46
CITIZENS S & LA	MIDDLETOWN	OH	924809	63098781	1.46
NEW MEXICO S & LA	ALBUQUERQUE	NM	1984577	136107225	1.46
MICHIGAN S & LA	ANN ARBOR	MI	850643	58700136	1.45
ST PAUL FS & LA OF CHICAGO	CHICAGO	IL	26594990	1835763185	1.45
LAMAR SA	AUSTIN	TX	6609124	456328595	1.45
ATLANTIC PERMANENT FS & LA	NORFOLK	VA	7763651	542774934	1.43
CAPITOL FS & LA	GARY	IN	1208032	84421161	1.43
HERITAGE S & LA	RICHMOND	VA	4455598	313704752	1.42
DETROIT FS & LA	DETROIT	MI	1766077	124519192	1.42
BATESVILLE FS & LA	BATESVILLE	AR	1057025	74411309	1.42
JEFFERSON FS & LA	MERIDEN	CT	3352469	237564737	1.41
SAN JOAQUIN FIRST FS & LA	STOCKTON	CA	3916460	277517889	1.41
COLONIAL S & LA	RICHMOND	VA	1524263	108617887	1.40
MOUNT VERNON S & LA	ROSSALYN	VA	2698041	192576211	1.40
STRONGSVILLE S & LA	STRONGSVILLE	OH	637769	45489066	1.40
SENTINEL SA	DELMONT	PA	554833	39918840	1.39
FIRST FS & LA	BRUNSWICK	GA	2393053	171571775	1.39
DEEP EAST TEXAS SA	JASPER	TX	385173	27745253	1.39
GARIBALDI FS & LA	BALTIMORE	MD	122432	8820564	1.38
GLANDORF S & LA	GLANDORF	OH	827038	59752393	1.38
HARLAN FS & LA	HARLAN	KY	188310	13637062	1.38
TRI-CITY FS & LA	HAPEVILLE	GA	952795	69337154	1.37
COMMUNITY FS & LA	FT OGLETHORPE	GA	167081	12163472	1.37
FIRST FS & LA OF ZION	ZION	IL	332853	24282671	1.37
ECONOMY FS & LA OF ST LOUIS	ST LOUIS	MO	2144965	156588842	1.37
SKOKIE FS & LA	SKOKIE	IL	7929742	581267298	1.36
AMERICAN S & LA	SPRINGDALE	AR	1074574	79116423	1.36
CEDAR GROVE S & LA	CEDAR GROVE	NJ	378611	28080394	1.35
AMERICAN FS & LA	FORT WAYNE	IN	762990	56615567	1.35
LAFAYETTE S & LA	GRETNA	LA	175434	12976018	1.35
HEART O TEXAS SA	SAN SABA	TX	1121113	830664470	1.35
PROSPECT PARK S & LA	HALEDON	NJ	1786683	132253825	1.34
MOHAWVILLE FS & LA	MOHAWVILLE	IN	267849	19977346	1.34
CENTENNIAL FS & LA	NAZARETH	PA	400404	30190235	1.33
CHARTER FS & LA	WEST POINT	GA	1492723	112407006	1.33
LANSING FS & LA	LANSING	IL	625823	46994596	1.33

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
HERITAGE FS & LA	FAYETTEVILLE	AR	880707	66209280	1.33
SECURITY HMSTD ASSN	NEW ORLEANS	LA	6040418	454510285	1.33
FIRST FS & LA OF EVANGELINE PARISH	VILLE PLATTE	LA	69364	5203581	1.33
HOME FS & LA	MOUNTAIN HOME	AR	281938	21194288	1.33
CITY FEDERAL S & LA	OAKLAND	CA	421529	31979373	1.32
QUEEN CITY S&LA	PLAINFIELD	NJ	4692013	357465526	1.31
METROPOLITAN FS & LA	DENVILLE	NJ	2457903	187688945	1.31
CAPITAL CITY FS & LA	WASHINGTON	DC	4465917	341126743	1.31
HOME S&LA OF NEW JERSEY	DUNELLEN	NJ	333906	25737293	1.30
FRIENDSHIP FS & LA	PITTSBURGH	PA	3808186	291971089	1.30
CITIZENS S & LA	MIDLAND	TX	1056521	81069601	1.30
GUADALUPE S & LA	KERRVILLE	TX	393146	30153284	1.30
SANDUSKY COUNTY FS & LA	FREMONT	OH	660977	51358313	1.29
SENTRY SAVINGS ASSOCIATION	SLATON	TX	742612	57363122	1.29
MERIT S & LA	LOS ANGELES	CA	2083823	160934466	1.29
VERMILION S & LA	ABBEVILLE	LA	247253	19395500	1.28
NASHVILLE FS & LA	NASHVILLE	AR	312190	24547192	1.27
FIRST S & LA	BURKBURNETT	TX	700938	55106216	1.27
FIRST FS & LA OF WALWORTH CO	DELAVAN	WI	493709	38920484	1.26
SUN FS & LA	TALLAHASSEE	FL	4139989	331781366	1.25
ARGO S & LA	SUMMIT	IL	317871	25691920	1.24
BATON ROUGE S & LA	BATON ROUGE	LA	1580208	127877148	1.24
UNITED S & LA	CHICAGO	IL	3447771	279326396	1.23
UNITED FS & LA	SAN FRANCISCO	CA	2334447	190533879	1.23
GENERAL FS & LA	MIAMI	FL	451020	37050532	1.22
CITIZENS FS & LA OF MATTESON	MATTESON	IL	1682499	138295795	1.22
GIBRALTAR S & LA	MAPLEWOOD	MO	621845	50179158	1.24
STATE MUTUAL FS & LA	JACKSON	MS	125217	10452613	1.20
DOLLAR FS & LA	MALVERNE	NY	1241319	104745611	1.19
FIRST FS & LA	SUPERIOR	NE	204497	17033828	1.20
METROPOLITAN S & LA INC	ARLINGTON	VA	441731	36723515	1.20
DIXON HOME S & LA	DIXON	IL	578828	48842548	1.19
FIRST FS & LA	STUTTGART	AR	580417	48975945	1.19
PELICAN HMSTD & SA	NEW ORLEANS	LA	4647219	390049889	1.19
AMERICAN SAVINGS ASSOCIATION	SPRINGFIELD	IL	11750809	994275878	1.18
ARCH FS & LA	ELIZABETH	NJ	1400389	120007875	1.17
GUARANTY TRUST S & LA	MEMPHIS	TN	303104	25921663	1.17
SOUTHERN FS & LA OF THOMAS COUNTY	THOMASVILLE	GA	2975330	256713454	1.16
TAYLOR S & LA	TAYLOR	TX	162858	13983099	1.16
COMMUNITY FS & LA	RAMSEY	NJ	1311787	113329750	1.16
HOME S & LA OF JOLIET	JOLIET	IL	2074245	181229892	1.14
MOUNTAINS SECURITY S & LA	WYTHEVILLE	VA	289005	25472495	1.13
FIRST FS & LA OF CHICAGO	CHICAGO	IL	46984343	4140121172	1.13
KING CITY FS & LA	MT VERNON	IL	1361983	120743365	1.13
EQUITABLE S & LA	PORTLAND	OR	15186179	1341343711	1.13
FIRST SECURITY SA	ABILENE	TX	693480	62126429	1.12
FIRST S & LA OF WILL COUNTY	LOCKPORT	IL	796969	71729685	1.11
MID-STATE S & LA	CARLYLE	IL	170004	15273422	1.11
BOONE COUNTY FS & LA OF CENTRALIA	CENTRALIA	MO	204184	18435351	1.11
NORTH MISSISSIPPI S & LA	CLARKSDALE	MS	1811423	165069826	1.10

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S&Ls WHICH ARE OPERATING BELOW THE PSLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%
CENTRAL BERGEN S&LA	RIDGEFIELD PARK	NJ	1335337	122205394	1.0
YORKWOOD S&LA	MAPLEWOOD	NJ	1908444	171256085	1.0
CONTINENTAL FS & LA	CLEVELAND	OH	11847782	1087628131	1.0
CITY OF BURLINGTON S & LA	BURLINGTON	NJ	119616	11115661	1.0
FIRST FS & LA	LEWISBURG	TN	190933	17714408	1.0
MIDWEST FS & LA OF MINNEAPOLIS	MINNEAPOLIS	MN	20010714	1891345377	1.0
INVESTORS S & LA	RICHMOND	VA	2663026	245821445	1.0
GREAT AMERICAN FS & LA	OAK PARK	IL	7839560	764143808	1.0
SUN S & LA	PORTLAND	ME	2445025	240586505	1.0
THE TALMAN HOME FS & LA OF ILLINOIS	CHICAGO	IL	72746086	7136621108	1.0
AMERICAN S & LA	DEDEDO	GU	581253	57266922	1.0
VALLEY FIRST FS & LA	EL CENTRO	CA	516954	51696890	1.0
SOUTHWEST S & LA	NATCHEZ	MS	150934	15183569	0.9
CENTENNIAL S&LA	PENNINGTON	NJ	900755	91733996	0.9
BERKLEY CITIZENS MUTUAL S & LA INC	NORFOLK	VA	127046	12990427	0.9
CAROLINA FS & LA	RALEIGH	NC	592883	60884693	0.9
LINCOLN STATE S & LA INC	CHURCH HILL	TN	135116	14002969	0.9
MIDLAND S & LA	BRIDGEVIEW	IL	591538	61817886	0.9
FIRST FS & LA OF SIOUX FALLS	SIOUX FALLS	SD	751309	78618918	0.9
FIRST PONTCHARTRAIN SA	LA PLACE	LA	196127	20416354	0.9
AMERICAN FS & LA	ADA	OK	184300	19229436	0.9
CLEVELAND COMMUNITY SAVINGS COMPANY	CLEVELAND	OH	155681	16426115	0.9
FIRST FS & LA OF WILMETTE	WILMETTE	IL	4010198	423935574	0.9
SEARCY FS & LA	SEARCY	AR	709418	74557614	0.9
BAYAMON FS&LA OF PUERTO RICO	BAYAMON	PR	4320887	469411766	0.9
FIRST FS & LA OF PLATTEVILLE	PLATTEVILLE	WI	95217	10304147	0.9
HI-PLAINS S & LA	HEREFORD	TX	317522	34418980	0.9
HOME FS & LA	PORTALES	NM	280136	30441016	0.9
HOME TRUST S & LA	VERMILLION	SD	120723	13202964	0.9
DEERING S & LA	PORTLAND	ME	110354	12241248	0.9
SAYREVILLE S&LA	OLD BRIDGE	NJ	393401	44001469	0.9
LINCOLN SQUARE S & LA	CHICAGO	IL	730353	81376007	0.9
ROCKINGHAM S & LA	HARRISONBURG	VA	328600	36889578	0.8
FIRST FS & LA	SPRINGHILL	LA	103108	11710720	0.8
CENTRAL FS&LA OF NASSAU COUNTY	LONG BEACH	NY	6672082	771899724	0.8
PONCE DE LEON FS & LA	CORAL GABLES	FL	98780	11502962	0.8
CAPITOL S & LA	CHICAGO	IL	111696	12950353	0.8
MT PROSPECT FS & LA	MT PROSPECT	IL	261448	30864523	0.8
ANTIOCH S & LA	ANTIOCH	IL	559710	65463389	0.8
SERIAL FS&LA OF NEW YORK CITY	NEW YORK	NY	1453987	173258991	0.8
TERREBONNE S & LA	HOUMA	LA	381747	45296645	0.8
FIRST FAMILY FS & LA	HEBER SPRINGS	AR	350273	41871013	0.8
INDEPENDENCE FS & LA	WASHINGTON	DC	680083	81617934	0.8
SUMMIT FIRST FS & LA	SUMMIT	IL	616704	74102925	0.8
VIKING SA	ALEXANDRIA	NM	65151	7856717	0.8
SOLANO FS & LA	VALLEJO	CA	73701	8906793	0.8
DE VARGAS S & LA OF SANTA FE	SANTA FE	NM	97775	11911648	0.8
ELMWOOD FS & LA	HARAHAN	LA	98056	12111052	0.8
CITIZENS BA	URBANA	IL	365930	45814111	0.8
DELTA S & LA	KENNER	LA	296774	37196105	0.8

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S&Ls WHICH ARE OPERATING BELOW THE PUBLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
PARISH FS & LA	DENHAM SPRINGS	LA	39155	6013401	0.60
GUARDIAN S & LA	BRIDGEPORT	WV	220449	29031910	0.79
CABELL FS & LA	HUNTINGTON	WV	298384	37122685	0.79
FIRST FS & LA	DELRAY BEACH	FL	6734067	848921859	0.79
COOPERATIVE S & LA	WESTMONT	IL	1634.8	207.1322	0.79
FIRST AMERICAN S & LA	BENTON	IL	104390	13288832	0.79
WASHINGTON S & LA	SPRINGDALE	PA	205793	26113343	0.79
TOWER FS & LA	WESTERN SPRINGS	IL	71561	9200178	0.78
FAJARDO FS&LA OF PUERTO RICO	FAJARDO	PR	135965	18000460	0.76
HEIGHTS SA	HOUSTON	TX	285366	37815355	0.76
KEOWEE FS & LA	SENECA	SC	42780	5785887	0.74
SIERRA FS & LA	DENVER	CO	233464	32032757	0.73
AMERICAN S & LA	BILOXI	MS	131914	18296161	0.72
UNIVERSITY S & LA	NORTH BRUNSWICK	NJ	244107	34201772	0.71
BROWARD FS & LA OF SUNRISE	SUNRISE	FL	776890	110019696	0.70
METRO FS & LA OF LAKES CHARLES	LAKE CHARLES	LA	209991	30116293	0.70
FIRST FS & LA OF DE SOTO CO	ARCADIA	FL	97815	14181018	0.69
COLES COUNTY S & LA	CHARLESTON	IL	11804	1684911	0.68
UNITED FS & LA OF ALEXANDRIA	ALEXANDRIA	LA	499955	73871693	0.68
AUDUBON FS & LA	NEW ORLEANS	LA	293484	43151191	0.68
CAPITOL FS & LA	EVERGREEN PARK	IL	901847	133937356	0.67
FIRST FS & LA OF GRAND FORKS & MINOT	GRAND FORKS	ND	1750406	277591930	0.63
SECURITY S & LA	VILLE PLATTE	LA	157294	24901199	0.63
FIRST FS&LA OF ROCHESTER	ROCHESTER	IN	2605419	421371105	0.62
MIAMI FS & LA	MIAMI	FL	61186	10159774	0.60
ILLINOIS VALLEY S & LA	PEORIA	IL	5921	841745	0.70
PONCE DE LEON FS & LA	BRONX	NY	185350	31066690	0.60
EAST FS & LA OF KINSTON	KINSTON	NC	1100739	185515579	0.59
DIXIE FS & LA	NEW ORLEANS	LA	3196107	549112491	0.58
VANDALIA CITIZENS S & LA	VANDALIA	IL	76374	13710000	0.56
COMMERCIAL FS&LA OF TANGIPAHOA PARISH	HAMMOND	LA	77724	13910093	0.56
HACIENDA FS & LA	OXNARD	CA	198886	35713593	0.56
PADRE FS & LA	CORPUS CHRISTI	TX	26766	4843941	0.55
GONZALES S & LA	GONZALES	LA	82000	14984929	0.55
UNION FS & LA	PINEVILLE	LA	137459	25310037	0.54
FONTAINEBLEAU FS & LA	SLIDELL	LA	49000	9083011	0.54
ENTERPRISE FS & LA	MARRERO	LA	45940	8533722	0.53
FIDELITY SAVINGS OF SF, A FS & LA	SAN FRANCISCO	CA	15142359	2886019558	0.52
NATCHEZ TRACE S & LA	KOSCIUSKO	MS	27365	5001990	0.51
TWIN PINES FS & LA	BERKELEY	IL	21130	4888694	0.51
CARRIBBEAN FS&LA OF PUERTO RICO	CAROLINA	PR	1801115	364553806	0.49
STANDARD FS & LA	ATLANTA	GA	1043342	215836494	0.48
FIRST FS & LA	WAVERLY	IA	192698	41437557	0.47
BIG SPRING SA	BIG SPRING	TX	125618	28035492	0.45
GRUNWALD S & LA	CHICAGO	IL	540149	121580824	0.44
RHODE ISLAND FS & LA	PROVIDENCE	RI	477019	114499538	0.42
UNION FS & LA OF COOK COUNTY	MATTESON	IL	450947	107387533	0.42
SUFFOLK COUNTY FS&LA	CENTEREACH	NY	10351345	2500340350	0.41
FIRST FS & LA OF FORT WAYNE	FORT WAYNE	IN	1392033	338999832	0.41
CRAWFORD S & LA	ROMEOVILLE	IL	1545735	388760727	0.40

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S&Ls WHICH ARE OPERATING BELOW THE FSLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%
HAVRE FS & LA	HAVRE	MT	283465	73354308	0.3
CAPITAL CITY FS & LA	ANNAPOLIS	MD	179939	62268897	0.2
PRINCETON S & LA	PRINCETON	NJ	99823	179077349	0.0
FIRST FS & LA OF HARLEMAN COUNTY	BOLIVAR	TN	31758	15380675	0.2
RED RIVER S & LA	COUSHATTA	LA	13611	6559956	0.2
CAPITAL S & LA	RICHMOND	VA	39180	11151860	0.3
CHICAGO FS & LA	CHICAGO	IL	1929593	585539511	0.3
1ST DAKOTA NONE S & LA	PIERRE	SD	38941	28010936	0.1
CORSICANA FS & LA	CORSICANA	TX	21974	15517736	0.1
MID-CITY FS & LA OF PHILA	NORTH WALES	PA	146132	68151055	0.2
PROVIDENT SA	PHILADELPHIA	PA	110725	36909132	0.3
GUARANTY FS & LA	TAYLOR	MI	42753	14186677	0.3
CHICAGO S & LA	CHICAGO	IL	11333	12115589	0.0
FAMILY S & LA	LOS ANGELES	CA	37315	12467074	0.3
MISSION FS & LA OF SAN ANTONIO	SAN ANTONIO	TX	18107	6174102	0.2
FOUNDERS FS & LA	NEW ORLEANS	LA	13597	12078794	0.1
MIDDLE PENINSULA-NORTHERN NECK S & LA	GLOUCESTER	VA	11858	11664457	0.1
FIRST FS & LA OF PEORIA	PEORIA	IL	1211265	467622458	0.2
UNITED SA	CINCINNATI	OH	279650	109274395	0.2
BARTON S & LA	NEWARK	NJ	421863	170811063	0.2
FOUNDERS S & LA	LOS ANGELES	CA	186971	67940537	0.2
INVESTORS S & LA	FAIRVIEW HEIGHTS	IL	110293	48614478	0.2
GRADY COUNTY S&LA	CHICKASHA	OK	31138	21946677	0.1
KERN S & LA	BAKERSFIELD	CA	80434	38207053	0.2
OLYMPIC S & LA	BERWYN	IL	1202913	593790415	0.2
CATANO FS & LA OF P R	CATANO	PR	30830	16480318	0.1
FAMILY S & LA, A FS & LA	SPRINGFIELD	VA	113467	72444130	0.1
TRI-COUNTY S & LA	CAMDEN	NJ	42952	29287425	0.1
SAGUARO S & LA	PHOENIX	AZ	206404	146631640	0.1
ALLIANCE FS & LA	KENNER	LA	41383	33470870	0.1
ISLAND FS & LA	HEMPSTEAD	NY	302091	285361385	0.1
FIRST FS & LA OF ACADIA	RAYNE	LA	12314	11277741	0.1
COLUMBIAN FS & LA	MT CARMEL	IL	13136	14399897	0.0
SUBURBIA FS & LA	GARDEN CITY	NY	509645	665416389	0.0
PENINSULA S & LA	NEWPORT NEWS	VA	74689	96459388	0.0
NORTHLAKE FS & LA	COVINGTON	LA	12459	16475666	0.0
CRESCENT FS & LA	NEW ORLEANS	LA	5800	6880937	0.0
KEYSTONE S&LA	NEPTUNE TOWNSHIP	NJ	70169	132148864	0.0
UNION FS&LA OF NEW YORK	NEW YORK	NY	79066	153834463	0.0
PUBLIC FS & LA	CALUMET CITY	IL	36501	116571298	0.0
BISCAYNE FS & LA	MIAMI	FL	690113	1839660738	0.0
FREEDOM FS & LA	WORCESTER	MA	203780	800567075	0.0
UPTOWN FS & LA OF CHICAGO	CHICAGO	IL	159626	519590507	0.0
SOUTHWESTERN FS & LA	CHICKASHA	OK	9379	30581480	0.0
HERITAGE FS & LA	BOSSIER CITY	LA	17355	71235481	0.0
COMMUNITY FS & LA	BRIDGEPORT	CT	0	15435422	0.0
NUTMEG FS & LA	DANBURY	CT	0	16065764	0.0
CO-OPERATIVE S&LA OF BERGEN COUNTY	RIDGEWOOD	NJ	0	0	0.0
BLUE GRASS FS & LA	LEWISBURG	WV	0	0	0.0
LINWOOD-KEYSTONE S & LA	CHESTER	PA	0	0	0.0

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SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
HOME S & LA	EASLEY	SC	0	0	0.00
UNITED FS & LA	FOUNTAIN INN	SC	0	0	0.00
CENTURY FS & LA OF ORMOND BEACH	ORMOND BEACH	FL	587	2260976--	0.00
GUARANTY S & LA	MOBILE	AL	0	0	0.00
MONTGOMERY FS & LA	BETHESDA	MD	-83	39829965	0.00
FIRST FS & LA	FAYETTE	AL	0	0	0.00
HOUSTON FS & LA	WARNER ROBINS	GA	0	6904195	0.00
METROPOLITAN FS & LA	HIALEAH	FL	0	0	0.00
FIRST FS & LA	GLASGOW	KY	0	0	0.00
FIRST FS & LA OF OAK RIDGE	OAK RIDGE	TN	0	0	0.00
FIRST FS & LA OF LANSING	LANSING	IL	0	0	0.00
MT. VERNON S & LA	MT VERNON	IL	0	0	0.00
MELROSE SAVINGS	MELROSE PARK	IL	0	0	0.00
CHAMPAIGN L & SA	CHAMPAIGN	IL	0	0	0.00
LAFAYETTE FS & LA OF GREATER ST LOUIS	WARSON WOODS	MO	0	0	0.00
PIPESTONE F S & LA	PIPESTONE	MN	0	0	0.00
CENTRAL WEST END S & LA	ST LOUIS	MO	0	19376728	0.00
HOMESEEKERS S & LA	NEW ORLEANS	LA	0	0	0.00
DAVY CROCKETT FS & LA	CROCKETT	TX	0	0	0.00
FIRST FS & LA	MONROE	LA	0	0	0.00
MARIANNA FS & LA	MARIANNA	AR	0	0	0.00
HILL COUNTRY S & LA	KERRVILLE	TX	0	0	0.00
STANDARD FS & LA	FORT SMITH	AR	0	0	0.00
UNITED PEOPLES FS & LA	FORT SMITH	AR	0	0	0.00
PLAINVIEW S & LA	PLAINVIEW	TX	0	0	0.00
OAK HMSTD ASSN	NEW ORLEANS	LA	0	0	0.00
SECURITY FS & LA	ALICE	TX	0	0	0.00
ARLINGTON SAVINGS ASSN	ARLINGTON	TX	0	0	0.00
MIDLAND FS & LA	MERIDIAN	MS	0	0	0.00
TROPICAL S & LA	HARLINGEN	TX	0	0	0.00
LONGVIEW S & LA	LONGVIEW	TX	0	0	0.00
FIRST FS & LA OF UNION PARISH	FARMERVILLE	LA	0	0	0.00
TRI-COUNTY S & LA	MULESHOE	TX	0	0	0.00
RED RIVER FS & LA	ALEXANDRIA	LA	0	0	0.00
WEST TEXAS SAVINGS ASSOCIATION	LUBBOCK	TX	0	0	0.00
CHARTER S & LA	CORPUS CHRISTI	TX	0	0	0.00
ACADIANA S & LA	KAPLAN	LA	0	0	0.00
L ACADIEN FS & LA	NEW IBERIA	LA	0	0	0.00
FAMILY FS & LA	SHREVEPORT	LA	0	6082515	0.00
SECURITY FS & LA	SCHUYLER	NE	0	0	0.00
TERRITORY S & LA	SEMINOLE	OK	0	0	0.00
SINCERE FS & LA	SAN FRANCISCO	CA	0	23233235	0.00
EASTERN WASHINGTON S & LA	EAST WENATCHEE	WA	0	0	0.00
LINCOLN S & LA	MT ZION	IL	-645	6860185	-0.01
PEACHTREE FS & LA	ATLANTA	GA	-25766	105497248	-0.02
FIRST FINANCIAL S & LA	NEW ALBANY	MS	-1614	10311696	-0.02
COLONIAL S A	HOUSTON	TX	-57667	117867980	-0.05
UNION MUTUAL S & LA	RICHMOND	VA	-4671	8113888	-0.06
PRUDENTIAL S & LA	CLAYTON	MO	-342361	400215954	-0.09
EQUITY S & LA	KEARNY	NJ	-282457	259965447	-0.11

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SOUTH SHORE FS & LA	MASSAPEQUA	NY	-428847	367204505	-0.1
COMMUNITY S & LA	NEWPORT NEWS	VA	-13514	10679302	-0.1
FIRST FS & LA OF MONROE COUNTY	MONROEVILLE	AL	-40154	29171923	-0.1
PEOPLES FS & LA OF THIBODAUX	THIBODAUX	LA	-49728	30073932	-0.1
FIRST FS & LA OF CRISP COUNTY	CORDELE	GA	-92358	44816747	-0.2
STATE S & LA	WALTERBORO	SC	-22390	10017646	-0.2
FIRST FS & LA OF EAST CHICAGO	EAST CHICAGO	IN	-467397	215301616	-0.2
RIVER EDGE S & LA	RIVER EDGE	NJ	-159329	61925545	-0.2
NILES S & LA	NILES	IL	-200557	78400451	-0.2
FIRST FS & LA OF BERGEN CO	ALLENDALE	NJ	-162001	59249468	-0.2
EVERGREEN FS & LA	EVERGREEN PARK	IL	-363910	113128031	-0.3
CAPITAL S & LA	CRANFORD	NJ	-547264	163634137	-0.3
WASHINGTON FS & LA	NEW YORK	NY	-2024183	614467512	-0.3
SECURITY FS & LA	MAYFIELD	KY	-158810	44038927	-0.3
UNION FS & LA	INDIANAPOLIS	IN	-1175657	348983827	-0.3
METROPOLITAN SA	FARMINGTON	MI	-1446943	413852965	-0.3
FIRST FLORIDA S & LA	GAINESVILLE	FL	-301192	80591774	-0.3
MUTUAL SA OF EL PASO	EL PASO	TX	-741798	175222877	-0.4
FIRST FS & LA OF BURLINGTON COUNTY	CINNAMINSON	NJ	-595454	135841355	-0.4
FIRST FS & LA	MARSHALL	IL	-307454	63109478	-0.4
CENTRAL PLAINS SA	TULIA	TX	-284787	56839412	-0.5
FIRST CAROLINA FS & LA	COLUMBIA	SC	-620053	119154802	-0.5
FIRST FS & LA	NEWPORT NEWS	VA	-525996	96491269	-0.5
LIBERTY FS & LA	LEESVILLE	LA	-80281	14700074	-0.5
FIRST FS & LA OF HOBERLY	HOBERLY	MO	-220874	39514756	-0.5
UNITED FS&LA OF PUERTO RICO	SAN JUAN	PR	-1651560	288442409	-0.5
CONTINENTAL S & LA	NEW ORLEANS	LA	-250370	41360925	-0.6
FIRST WESTERN FS & LA	RAPID CITY	SD	-76476	11689069	-0.6
TRI-LAKES FS & LA	BRANSON	MO	-91732	13921208	-0.6
KLAMICHI S & LA	ELGO	OK	-44841	6791387	-0.6
FIRST FS&LA OF NEW YORK	NEW YORK	NY	-4474584	660146080	-0.6
HOME FS&LA OF PUERTO RICO	PONCE	PR	-1119955	168147113	-0.6
GUARANTY FS & LA	GLENVIEW	IL	-1362710	188144621	-0.7
CENTURY FS & LA OF LONG ISLAND	CEDARHURST	NY	-3561426	490609343	-0.7
MONROE S & LA	MONROE	LA	-1722588	230663714	-0.7
GARY FS & LA	GARY	IN	-123174	15837588	-0.7
MONTANA S & LA OF KALISPELL	KALISPELL	MT	-70872	8445420	-0.8
CORONADA S & LA	ALBUQUERQUE	NM	-310903	34891342	-0.8
WASHINGTON-LEE FS & LA	MC LEAN	VA	-3489559	375475474	-0.9
STATE S & LA	CLOVIS	NM	-159190	16328706	-0.9
FORT WAYNE FS & LA	FORT WAYNE	IN	-326584	33288098	-0.9
TROPICAL FS & LA	MIAMI	FL	-43977	4434196	-0.9
CALVERT S & LA INC	BALTIMORE	MD	-3995462	391948938	-1.0
GULF FS & LA OF JEFFERSON PARISH	METAIRIE	LA	-1018117	97487294	-1.0
FIRST HOME FS & LA	OWENSBORO	KY	-1002372	83880622	-1.2
COMMUNITY FS & LA	NASHVILLE	TN	-101114	8423414	-1.2
ALLIED FS & LA	JAMAICA	NY	-227570	18396723	-1.2
ST BERNARD FS & LA	CHALMETTE	LA	-107345	7650602	-1.4
JACKSON FS & LA	JACKSON	MS	-523514	35945477	-1.4
AMERICAN FS & LA	SOUTHFIELD	MI	-12532239	846041024	-1.4

S&L reporting date is 6/30/82 Home Loan Bank Board release date is 10/25/82

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S&Ls WHICH ARE OPERATING BELOW THE FSLIC MINIMUM NET WORTH REQUIREMENT (3 percent of assets)

SAVINGS AND LOAN ASSOCIATION NAME	CITY	STATE	NET WORTH($)	ASSETS($)	RATIO(%)
GUARANTY SA	PITTSBURGH	PA	-3100898	188929903	-1.64
REPUBLIC FS & LA	LAFAYETTE	LA	-311595	19418042	-1.6
NORTHERN FS & LA	ST PAUL	MN	-4328330	270508964	-1.6
RELIANCE FS & LA	STRAFFORD	MO	-401899	23846076	-1.6
GUARDIAN FS & LA	SILVER SPRING	MD	-3383982	190028582	-1.8
SUBURBAN S & LA	WAYNE	NJ	-39617537	2009243939	-1.9
CARONDELET S & LA	ST LOUIS	MO	-1684842	75654340	-2.2
FIRST FS & LA	BROWNSVILLE	TN	-297476	12608033	-2.3
CORONADO FS & LA	KANSAS CITY	KS	-204986	6911070	-2.9
INVESTORS SA	HOUSTON	TX	-1169091	38412061	-3.0
GARFIELD FS & LA OF PHILA	POTTSTOWN	PA	-2688922	71036398	-3.7
BOHEMIAN S & LA	ST LOUIS	MO	-968424	17202240	-5.6
NORTHWESTERN S & LA	NORMANDY	MO	-4660196	92887526	-5.0
MODERN S & LA	PASADENA	TX	-1646880	21092562	-7.8

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APPENDIX L

STATE OF ILLINOIS

PHONE: 793-2030

OFFICE OF THE
SAVINGS AND LOAN COMMISSIONER
160 NORTH LA SALLE
CHICAGO 60601

IN THE MATTER OF THE POSSESSION
AND CONTROL BY THE COMMISSIONER
OF SAVINGS & LOAN ASSOCIATIONS
OF TELEGRAPH SAVINGS AND LOAN
ASSOCIATION, CHICAGO, ILLINOIS May 22, 1980

NOTICE OF TAKING CUSTODY OF
TELEGRAPH SAVINGS AND LOAN ASSOCIATION
OF CHICAGO, ILLINOIS

Notice is hereby given that I, WILLIAM J. SCHILLING, Commissioner of Savings & Loan Associations for the State of Illinois, do hereby take custody of TELEGRAPH SAVINGS AND LOAN ASSOCIATION, 165 West Jackson Boulevard, 65 East Madison Street, 3535 North Central, 2429 North Clark Street, Chicago, Illinois; 820 Church Street, Evanston, Illinois; and Meadowdale Shopping Center, Carpentersville, Illinois; effective May 22, 1980 at 5:15 p.m., Central Daylight Time, pursuant to the authority vested in me by Section 7-8 of the Illinois Savings & Loan Act (*Illinois Revised Statutes*, Ch. 32, §701 *et seq.*). Said custody is to include custody of each and all of said Savings and Loan Association's assets, books, records and property of every kind, description and character.

It appears from reports made to me and from examinations made of TELEGRAPH SAVINGS AND LOAN ASSOCIATION on my behalf, and I do hereby find:

(1) that the withdrawable capital of TELEGRAPH SAVINGS AND LOAN ASSOCIATION is impaired to the extent that the realizable value of its assets is insufficient to pay in full its creditors and holders of its withdrawable capital and its permanent reserve capital is impaired; and

(2) that TELEGRAPH SAVINGS AND LOAN ASSOCIATION is unable to continue operations.

Based on the foregoing, I find that an emergency exists which may result in loss to members or creditors of TELEGRAPH SAVINGS AND LOAN ASSOCIATION and therefore this custody shall be effective immediately, on the date and at the time recited hereinabove.